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COMMITTEE WORKSHOP

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Development of Statewide) Docket No.
Guidelines for Reducing Wildlife) 06-OII-1
Impacts from Wind Energy)
Development)
_____)

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MONDAY, FEBRUARY 5, 2007

2:01 P.M.

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Jackalyne Pfannenstiel, Associate Member

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Melissa Jones, Advisor

Rick York

Misa Ward

John Mathias

Dick Anderson

ALSO PRESENT

Scott Flint
California Department of Fish and Game

Marjorie Blackwell
Golden Gate Audubon Society

Julia Levin
Audubon California
Defenders of Wildlife

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California Wind Energy Association

Anne E. Mudge, Lawyer
Cox, Castle and Nicholson, LLP

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Pandion Systems, Inc.

Paul Vercruyssen
Center for Energy Efficiency and Renewable
Technologies

ALSO PRESENT

Krista Kisch
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Oak Creek Energy Systems, Inc.

Gregory Blue
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Brenda LeMay
Horizon Wind Energy

Diane Fellman
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Bob Power
Santa Clara Valley Audubon Society

Kenneth Stein (via teleconference)
FPL Energy

Rich Cimino

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1 P R O C E E D I N G S

2 2:01 p.m.

3 PRESIDING MEMBER GEESMAN: This is a
4 workshop of the California Energy Commission's
5 Renewables Committee on our staff draft report for
6 statewide guidelines for reducing the impacts to
7 birds and bats from wind energy development.

8 I'm John Geesman, the Presiding Member
9 of the Commission's Renewables Committee. To my
10 left is Commissioner Jackalyne Pfannenstiel, the
11 Associate Member of the Renewables Committee and
12 the Chair of the Energy Commission. To my right
13 Melissa Jones, my Staff Advisor.

14 I want to thank all of you for both your
15 attendance today and your participation in this
16 process to date. It's about a year since the
17 kickoff of these efforts at a workshop jointly
18 sponsored by the Audubon Association and the Wind
19 Energy Association in Los Angeles last January.

20 That was a followup to a recommendation
21 that the Energy Commission adopted in its 2005
22 Integrated Energy Policy Report to develop
23 advisory guidelines for local permitting agencies
24 involving wind energy development.

25 The Commission's tried to be very clear

1 throughout this process that our interests are
2 twofold. One, we would like to accelerate wind
3 energy development; that's been a staple of
4 California energy policy for the last several
5 years.

6 Second, we would like to minimize the
7 impact on birds and bats. In our view it is
8 necessary to do so in order to accomplish our
9 first goal.

10 We appreciate the degree to which many
11 of you have participated in this process, and we
12 recognize that people have fairly strongly held
13 opinions; in many instances the scientific data,
14 the empirical facts tend to contradict each other.
15 And it's difficult to sort those through.

16 The staff has prepared a draft set of
17 guidelines. I think it's an impressive draft, but
18 I emphasize it's only a draft. This is a process
19 in motion and we're here today to gather your
20 thoughts as to what direction the full Commission
21 should take this in.

22 We've reviewed the written comments that
23 many of you have submitted. I recognize several
24 of the organizations have indicated a desire to
25 submit a second set of comments, given the

1 abbreviated timeframe. And I certainly welcome
2 that.

3 If any of you have filed such a second
4 set I want to apologize in advance, I've not yet
5 reviewed them or, to my knowledge, received them.
6 But we will do so when we get them.

7 And I guess as a final point I
8 particularly want to thank the State Department of
9 Fish and Game for their involvement in this
10 process from the very outset. We have seen that
11 as a necessary prerequisite to being able to make
12 any progress in this area. We've certainly gotten
13 a considerable degree of assistance and
14 participation throughout this process from Fish
15 and Game and look forward to continuing that in
16 the future.

17 Commissioner Pfannenstiel.

18 ASSOCIATE MEMBER PFANNENSTIEL: Let me
19 just add to your comments my appreciation for
20 everybody not just being here today, but working
21 with us. We knew this wasn't going to be easy,
22 but we also knew it was going to be very
23 important. And it continues; I think we've taken
24 a large step forward with the staff draft. And
25 now we can focus attention on where there might be

1 changes that might be indicated in the staff
2 draft.

3 So, you know, work with us; we want to
4 work with you. And, again, thank you all for
5 being here today.

6 PRESIDING MEMBER GEESMAN: How would the
7 staff like to proceed? I've got blue cards to go
8 to at some point. Should we just simply jump to
9 that?

10 MS. WARD: Well, actually we have a
11 couple of a housekeeping items.

12 PRESIDING MEMBER GEESMAN: Okay.

13 MS. WARD: And then I believe the order
14 that Dick Anderson was going to start with a brief
15 staff presentation. Right. He's stepping in for
16 Susan Sanders who is not here today.

17 So, in terms of the blue cards we
18 realize that we're out of those and we apologize.
19 If any others did not get a chance to fill out a
20 blue card and would like to speak, please bring
21 forward a business card or write your name and
22 affiliation on a piece of paper and we will
23 welcome further comments. And, again, we
24 apologize for being out of those cards.

25 You'll notice that there's a space here

1 at the end of the table where there are no chairs.
2 We allow that space open for folks who are in the
3 back to come forward and speak into a microphone
4 so that your statement can be recorded.

5 And that's all I have.

6 MR. MATHIAS: Just to add one thing. If
7 people on the phone would want to speak, please
8 give your name to the operator. We check in
9 periodically with the operator for that.

10 PRESIDING MEMBER GEESMAN: We are
11 keeping a transcript so I will make certain that
12 we have names and any institutional affiliation
13 for anybody that addresses us. And anyone from
14 the audience that cares to address us, you're
15 going to need to come up and speak into one of the
16 microphones so that our reporter can pick up your
17 comments.

18 Dick, I guess it's your turn.

19 MR. ANDERSON: Trying to figure out how
20 to make this work.

21 THE REPORTER: That's just for
22 reporting; it doesn't amplify. The amplifying
23 mike is there on the end.

24 MR. ANDERSON: I can probably talk loud
25 enough anyhow. I'm just going to quickly run

1 through the chapters of the guidelines, Scott and
2 I will, and recap briefly what the chapters were
3 about, for some who may not have read them, or
4 read them awhile ago.

5 And then I'm going to read some of --
6 kind of highlight the comments that we've
7 received, and a little bit about how we're
8 thinking of responding. But in most cases that's
9 very general.

10 I also would like to thank everybody
11 here. I've seen a lot of familiar faces. A lot
12 of people have really put a lot of time and effort
13 in this; traveled long distances; and provided
14 excellent comments. It's been very collaborative,
15 and the comments have been very constructive and
16 helpful. We intend to integrate a number of those
17 comments into this next version.

18 I also want to say that comments we'll
19 get today, and then the ones through, I believe,
20 the 20th is the deadline for written comments.
21 Obviously we won't make any decisions on changes
22 until we've looked at everything; had a chance to
23 review it with Fish and Game and CEC Staff and the
24 scientific advisory committee members.

25 The first section in the document is the

1 executive summary. It describes the purpose of
2 the document; it encourages wind development in
3 the state while minimizing impacts to birds and
4 bats. And then it discusses briefly each of the
5 subsequent chapters.

6 The comments we received were that the
7 document needs to emphasize the purpose of the
8 guidelines. And it also needs to emphasize vastly
9 more that they're voluntary. And we heard that
10 loud and clear, and we plan to reevaluate that
11 chapter and make it much more clear.

12 Chapter 1 is preliminary site screening.
13 Just describes tools and resources that are
14 available and should be used for early site
15 screening. Things like databases and literature
16 and expert opinion and other information that's
17 from nearby projects.

18 It also had a checklist; and the
19 checklist is really what got the comments. People
20 don't like the checklist; they didn't think it was
21 valuable or worthwhile. There were some
22 suggestions on improving it, such as defining the
23 purpose of the list, length of responses to the
24 questions, specific studies that might be needed,
25 provide a ranking or a scoring system, integrate

1 the questions in with questions in chapter 3, or
2 just make a bulleted list for reference.

3 And we agree the checklist needs a lot
4 of work, and either it will go away or it will be
5 revised.

6 Chapter 2, the scientific advisory
7 committee. This recommends formation of an
8 advisory committee to provide unbiased credible
9 advice on major scientific decision points. And
10 it could be a standing or regional or project-
11 specific committee.

12 We suggest including members such as
13 representatives of Fish and Game, U.S. Fish and
14 Wildlife Service, lead agency, a conservation
15 organization and developer as a minimum.

16 This group would be advisory only with
17 no authority. It's important to consult with
18 interested stakeholders before moving too far
19 forward on monitoring, so that there's no
20 surprises.

21 This got, by far, the most comments.
22 There was a lot of concern about what this was
23 going to be. Some of the comments were creates
24 another layer of review. Too difficult and time
25 consuming to create clearly in permitting process,

1 early in the permitting process. Gives de facto
2 permitting authority to the scientific advisory
3 committee.

4 Lack of agency staffing would impede SAC
5 formation. Increases costs to the developer. How
6 do you resolve different disagreements among the
7 scientific advisory committee members. And too
8 rigid reliance on scientific advisory committee
9 throughout the guidelines.

10 Other comments were emphasize continuity
11 among participation by the committee. Membership
12 have no conflicts of interest. But, on the other
13 hand, said should include members with policy,
14 wind technology and regulatory backgrounds and
15 experience.

16 Compile a list of approved biologists to
17 serve at-large for protected or regions. And
18 empanel a statewide standing staff advisory
19 committee.

20 So we had a wide range of comments, but
21 there was a lot of concern on that one. But this
22 section would be -- we anticipate a major
23 rethinking and revision.

24 Chapter 3 was pre-permitting assessment
25 where we talk about the types of studies that

1 should be done in order to get an estimate of the
2 level of impacts. And it includes fuel studies
3 for at least one year with bird use counts. Talks
4 about small bird counts and other diurnal bird
5 surveys and when they might be needed.

6 Talks about nocturnal surveys that might
7 be used for surveys for nocturnal bird migration.
8 And it recommends nightly acoustic monitoring for
9 bats for that year, for one year.

10 The comments that we got were --
11 differed widely from reviewers saying that one-
12 year duration for monitoring was way too short;
13 some recommended three years to capture between
14 year variation and bat numbers. Others felt that
15 one year was excessive. Specifically the projects
16 that were in existing windfarms.

17 Everybody agreed that the chapter should
18 do a better job of describing which study methods
19 to use in which circumstances; and we should
20 provide a discussion of the pros and cons of all
21 the methods that were discussed.

22 Some reviewers commented that
23 recommended bat monitoring was new and untested,
24 premature given the current state of knowledge
25 about bat/turbine interactions; and in excess of

1 what is done elsewhere in the country.

2 Some reviewers thought that there was
3 too much emphasis on wind-more, that standard
4 survey effort was needed; and not enough on wind-
5 less was needed. And that the result didn't --
6 this results in uncertainty on the part of the
7 developers to what might be required.

8 Our response, what we're thinking is
9 that we will improve the discussion of diurnal
10 bird survey techniques so that the reader can
11 determine which circumstances warrant which study
12 techniques. We'll talk about the pros and cons.
13 We'll emphasize the bird use count as the primary
14 tool that we're proposing to use for bird use at a
15 site and to assess risk.

16 We'll try to provide examples and put
17 more context why we've recommended the level of
18 study that we have. And we'll reexamine our
19 recommendations on bat studies and consult with
20 bat experts, again in light of comments that we've
21 received.

22 Some of these hold true for chapter 7,
23 when we get there; my comments will be shorter.

24 Chapter 6 is on permitting. We thought
25 it would be useful to summarize the entire

1 permitting process. And reinforce in that that
2 there's a need to consult with responsible
3 agencies and other stakeholders early and often.

4 We didn't get too many comments on this
5 except that it seemed like it wasn't a very
6 valuable chapter and that it could be incorporated
7 into chapter 3 and 4, or dropped all together.
8 So, we'll reevaluate that and see if it warrants a
9 separate chapter of its own.

10 Operations monitoring, chapter 7. I
11 skipped chapter 4 and 5 because Scott is going to
12 address that after I'm finished here.

13 Chapter 7 describes the standard
14 protocols for operations monitoring. So after the
15 project is up and running, and it had standardized
16 protocols for bird use counts, bat monitoring,
17 carcass counts and recommendations for conducting
18 searcher efficiency, trials, developing scavenging
19 estimates and assessing background mortality in
20 performing data analysis and metrics.

21 Specific recommended protocol for birds
22 and bats, including two years of carcass searches
23 and two years of bat and bird use surveys, with
24 carcass searches being conducted every two weeks.

25 Reviewers had a number of opinions on

1 the recommended two-year survey. Some commented
2 two years was excessive and recommended
3 incremental ramp-up approach, with one year amount
4 of sampling; and then increase that if -- the
5 first year if the results of that year indicate
6 concern.

7 Others thought three years of monitoring
8 was needed to assess variability between years.
9 And others emphasized the need for monitoring
10 throughout the life of the project, every five
11 years; particularly with changes in wildlife
12 population due to global warming.

13 Other comments were clarify objective of
14 operation monitoring. This is to verify pre-
15 permitting estimates and mortality, or to assess
16 bird/bat mortality with a high degree of accuracy.

17 There needs to be a tie for post-
18 construction monitoring to permit conditions.
19 Operation monitoring costs are high; better to
20 start with a moderate level of operation
21 monitoring, then ramp up if mortality is high.

22 And the section on DOE searches for bat
23 carcasses needs revising, scavenger rates
24 determined, search frequency and not all sites
25 have high bat -- with bat mortality and high

1 scavenging rates.

2 Monitoring every five years is too open-
3 ended. Needs some clarification, context as to
4 why we would do that, or why it would be
5 necessary.

6 Potential to determine on a project-by-
7 project basis if a shorter duration would be
8 appropriate based on one-year results. It's kind
9 of this ramp-up, let's look at one before we go to
10 the second.

11 And the responses, these are wonderful
12 comments. We're going to consider all of them and
13 we'll make revisions to clarify objectives of the
14 monitoring. And we'll provide more context for
15 the recommended level of study effort. We'll
16 assess suggestions about the incremental ramp-up
17 approach. And we'll consider modifying the
18 frequency, intensity and duration of protocols
19 both for bats and birds.

20 Chapter 8 is a step-by-step
21 implementation guide. It was an approach to
22 digest the guidelines down to the important
23 points.

24 The comments were this was an easy-to-
25 understand section. They clarify what the

1 guidelines were recommending. However, there were
2 inconsistencies between some of the information in
3 the other chapters and the step-by-step guide, and
4 there wasn't clear substantiation in some of the
5 other chapters as to how we selected certain
6 protocols in chapter 8.

7 And there was also a suggestion that we
8 should move chapter 8 to the front of the
9 document.

10 Our response is that we plan to clean up
11 all the inconsistencies; and we do want to
12 reevaluate whether they should go in the front or
13 the back. We plan to work on the other chapters
14 so that they clearly reach the same -- reach the
15 conclusion that's provided in chapter 8.

16 And then we have a bunch of appendices
17 that I think by the time people got back to that
18 point nobody really read it.

19 (Laughter.)

20 MR. ANDERSON: Pretty sick of this
21 stuff. But, we would -- there is contact
22 information in there for some of the agencies.
23 There's acronyms, glossary, scientific names, some
24 sample datasheets, some formula for adjusting
25 fatality rates, and some discussion of research

1 that's in a process for revising the guidelines.

2 So, if you do have time we would certainly like to
3 see some comments on that, to help us.

4 And then I'll turn this over to Scott
5 and he's going to talk about impacts and
6 mitigations.

7 MR. FLINT: Thank you, Dick. I was just
8 going to add in the same format as Dick, outline
9 our recap and comments and response to chapters 4
10 and 5, which Fish and Game had the primary
11 responsibility for and have the input into
12 developing in this process so far.

13 Chapter 4 is entitled impact analysis
14 and conformance with laws. This chapter primarily
15 presents a factual discussion of the legal
16 framework that surrounds wind power project siting
17 in California. And in doing so it describes CEQA.
18 And in the rarer instances how we interplay with
19 CESA, California Endangered Species Act.

20 Also describes other laws on the books
21 that deal with raptor take and the consequences of
22 those. And also puts out the framework for
23 federal law, including the Federal Endangered
24 Species Act and the Migratory Bird Treaty Act.

25 So, basically those were factual

1 presentations and with some minor discussion of
2 how, what considerations need to be made when
3 siting a project in California.

4 Some of the comments we received on that
5 is that we need to clarify further with regard to
6 the purpose of -- overall purpose of the
7 guidelines, how these laws either integrate or fit
8 together, and which process we're targeting the
9 different parts of the discussion to.

10 Again, the primary process that we're
11 trying to help people through here is compliance
12 with CEQA for the project siting in California.
13 And so we need to have a little more clarity on
14 that. And then also how companies can address or
15 not address, if it's not possible, other wildlife
16 laws, either as a complementary to that process or
17 in addition to that process.

18 So we will work on making that a little
19 clearer in the guidelines. Those are good
20 comments and we appreciate them.

21 Chapter 5 is entitled, impact avoidance,
22 minimization and mitigation. And in keeping with
23 the overall goals of the guidelines to both
24 accelerate siting a project and impacts to birds
25 to bats.

1 This chapter lays out a suite of
2 measures for impact avoidance and minimization
3 that one would consider as mitigation as you go
4 through the CEQA process; hopefully provide some
5 technical assistance on how to apply that in a
6 local siting process.

7 These measures that are listed here in
8 kind of a menu fashion or listed fashion here
9 would reduce impact to birds and bats during the
10 operational lifetime of the project from siting
11 changes and/or operational changes over time.

12 This chapter also gives examples of
13 specific compensation measures which would offset
14 the unavoided impacts under CEQA, as required
15 under CEQA. Again, gives many of the
16 compensational alternatives that lead agencies
17 could choose when complying with CEQA.

18 And they're listed because they have
19 known -- one of the mitigation measures or the
20 compensation measures listed that were chosen to
21 be listed have known positive benefits to birds
22 and bats. And then they're presented in a way
23 that allows flexible options for implementation by
24 local lead agencies.

25 So some of the comments we received on

1 this chapter are need more certainty on how these
2 would be used and how they would fit with the
3 process. And a desire to see some more specific
4 examples on what types of projects would need what
5 mitigation measures. And again, in the other
6 chapter, what minimization measures that could be
7 applied.

8 So we talked about perhaps coming up
9 with some scenarios that would help work through
10 that; examples and scenarios to demonstrate how
11 they would be applied. And so we are considering
12 that for the revision.

13 And that's what I have for those two
14 chapters.

15 PRESIDING MEMBER GEESMAN: Well, thank
16 you, both, Dick and Scott. I think the best thing
17 for us to do then is to go to the blue cards and
18 business cards and scratch paper for anybody that
19 cares to address us.

20 Let me say that in the interest of
21 promoting as much exchange of viewpoints as
22 possible, if the comment someone makes raises a
23 question in your mind, or you feel compelled to
24 pose a question, after the person is done
25 speaking, if you'll raise your hand I'll recognize

1 you. And we can try and dig a little bit deeper
2 into any comments that are made.

3 My first is Marjorie Blackwell, Golden
4 Gate Audubon Society.

5 MS. BLACKWELL: Can we get a chair?

6 PRESIDING MEMBER GEESMAN: We sometimes
7 ask our witnesses to assume a kneeling position.

8 (Laughter.)

9 PRESIDING MEMBER GEESMAN: We'll forego
10 that today.

11 MS. BLACKWELL: Is this okay?

12 PRESIDING MEMBER GEESMAN: Yes.

13 MS. BLACKWELL: My name's Marjorie
14 Blackwell; I'm the President of Golden Gate
15 Audubon. And I'm here speaking on behalf of our
16 8000 members.

17 First, we thank you, the Commission, for
18 what you're doing. We applaud the Commission for
19 your efforts to draft guidelines that balance
20 wildlife protection with the development of wind
21 power.

22 We concur with the comments that are
23 being made by Audubon California on these matters.

24 We have several comments that we think
25 would strengthen the guidelines, some of which

1 have already been covered in your assessment. But
2 first we think it's important that the guidelines
3 should be -- that the scientific advisory
4 committee should be maximally integrated into the
5 development of any new wind power project.

6 As the guidelines correctly state, the
7 purpose of the SAC is to provide unbiased,
8 technically credible advice. And in order to
9 insure that the SAC does perform its duties in an
10 unbiased fashion, the guidelines should not
11 recommend inclusion of scientists who are
12 compensated by the applicant.

13 We recommend the Commission develop a
14 list of qualified, objective biologists who are
15 able to serve as SAC members either at-large or
16 for particular regions in wind resource areas.
17 They could come from universities, public agencies
18 and organizations without conflicts of interest.

19 Secondly, we think that the pre-
20 permitting surveys are insufficient. As you know,
21 proper siting of wind turbines is the most
22 critical element in reducing their impacts on bird
23 and bat populations.

24 The U.S. Fish and Wildlife guidelines on
25 wind energy recommend a minimum of three years of

1 preconstruction surveys. We disagree that one
2 year of pre-permitting studies is sufficient. And
3 we urge you to recommend a minimum of three years
4 of pre-permitting surveys.

5 Thirdly, we think the recommended impact
6 avoidance and minimization actions are
7 insufficient. As the guidelines correctly
8 recommend, the SAC should be involved in pre-
9 permitting site selection or macrositing. But we
10 think it's equally important that the SAC play a
11 strong role in macrositing the layout of turbines
12 within the development area.

13 Scientists who are studying wind turbine
14 impacts on birds are learning more and more about
15 the importance of macrositing. And as they learn
16 more, we think it will play an ever more
17 increasing role in reducing impacts to wildlife.

18 At Altamont, for example, scientific
19 information is being used to remove the highest
20 risk turbines, to relocate existing turbines and
21 to site new repowered turbines. So we think the
22 SAC's involvement in site selection will eliminate
23 bird and bat problems, and that they should be
24 consulted on turbine layout and other macrositing
25 issues before project construction.

1 So, again, thank you very much for the
2 opportunity. And we believe that with these
3 changes that they will strengthen the guidelines
4 and encourage industry to develop new wind power
5 for California green energy.

6 Our Executive Director is submitting
7 comments in writing, so you'll have those, as
8 well.

9 PRESIDING MEMBER GEESMAN: Thank you
10 very much. Julia Levin representing Audubon and
11 Defenders of Wildlife.

12 MS. LEVIN: Thank you, Commissioners. I
13 am representing both Audubon and Defenders of
14 Wildlife. Kim Delfino from Defenders of Wildlife
15 had a conflict today, but both of our
16 organizations nationally put together our
17 organizations have over a million members. And I
18 am not overstating it when I say that both of our
19 organizations nationally are watching this process
20 and are very deeply grateful to the Commission for
21 its leadership.

22 We believe that the process, itself, has
23 been very very valuable in increasing common
24 understanding, building relationships among the
25 stakeholders, developing better understanding of

1 the gaps in data and research needs, and moving us
2 forward on these issues. So, we really want to
3 express our very deep gratitude for the leadership
4 that you've shown. And also thank your staff,
5 consultants and staff of Fish and Game.

6 We believe that this first draft is an
7 excellent start. There are certainly changes we
8 would like to see, but it's a very very
9 comprehensive look at the issues; and they're not
10 easy issues, as we all know. But it's a very very
11 good first start and so, thank you.

12 We have four major areas of concern or
13 suggestion, recommendations that we think could be
14 clarified or strengthened; or in some cases, maybe
15 even relaxed there. See, --

16 (Laughter.)

17 MS. LEVIN: -- we're not always around
18 making things harder. And actually on that note I
19 really wanted to step back a little. Because I
20 think in a few areas, I was trying to think about
21 if I were a wind developer, or what is sort of
22 practically what we're trying to get at, what I
23 think that staff was trying to get at in certain
24 areas.

25 But before I get to that, the four major

1 areas I did want to cover, the first is the scope
2 of the guidelines, scope and goals, sort of
3 together. Then the length of pre-permitting
4 studies, pre-permitting studies generally. The
5 role of the scientific advisory committee. And
6 then the long-term monitoring and adaptive
7 management. Probably not surprising those would
8 be the areas.

9 So, under the scope, as I said in our
10 written comments, we absolutely believe that the
11 guidelines have chosen the right scope; that to
12 limit them to CEQA, as some parties have
13 suggested, would really defeat the over-arching
14 purpose, which is to reduce impacts on birds and
15 bats.

16 We also don't think it's possible to
17 comply with CEQA without also looking at the
18 wildlife laws, because the determination of
19 significance depends, in part, on which species
20 are there; whether they're migratory species,
21 listed species, species of concern. And so you
22 really can't separate one law from the others.

23 But we also don't think it's advisable.

24 Part of the end-goal here, and, again,
25 sort of stepping back from what I think is

1 hopefully what we're all moving toward, and we
2 won't be able to do it right away with these
3 guidelines, but over the next several years what I
4 hope we can all achieve is enough understanding
5 and enough consensus about how to develop new wind
6 power, how to expand and protect wildlife, that we
7 could go to the State Legislature and get some
8 sort of statewide exemption under incidental take
9 permit.

10 You know, the equivalent of a WDR in the
11 water world, a waste discharge requirement, or a
12 statewide air permit where, if there's a set of
13 measures that are taken, then the permitting
14 process is somehow fast-tracked. And I think that
15 would be in everyone's interests here.

16 We're not there yet. We don't know
17 enough scientifically and I don't think that we've
18 been testing the guidelines enough yet. But I
19 think that that may be able to streamline the
20 process and still protect wildlife and expand wind
21 power is certainly Audubon's and Defenders of
22 Wildlife's goal in this effort. And we see this
23 as a very important first step.

24 So, on the length of pre-permitting
25 studies I know one of the stakeholders, I believe

1 CalWEA, commented that they don't think this is an
2 appropriate area for the guidelines to comment on.
3 We feel like this is the most important aspect of
4 the guidelines. As Marjorie Blackwell said, where
5 you put the turbines is the single most important
6 issue in the level of impacts, and which species
7 you're going to impact.

8 And clearly the discrepancy among
9 different guidelines out there, Washington State,
10 the Fish and Wildlife Service guidelines, the
11 British guidelines, there are a lot of guidelines
12 out there now and they're all over the map in
13 terms of what they recommend about length of pre-
14 permitting studies. Which, to me, indicates this
15 is a very difficult area.

16 There are a lot of competing interests.
17 And it's one, if I were a permitting agency, a
18 county with no real expertise about it, I would
19 want some guidance, which is what these are for,
20 about what is an appropriate length, and under
21 which circumstances.

22 So, this, to us, is one of the most
23 critical parts of the guidelines. And we believe
24 it needs to stay in. If anything, we would like
25 to see more detail in this area; more

1 clarification about -- we agree with Golden Gate
2 Audubon that three years minimum would be a lot
3 better.

4 We also understand that probably would
5 have the effect, in some cases, of slowing
6 projects down. I think there are a lot of other
7 pre-permitting things that applicants need to do
8 that take a couple of years.

9 So I would like to see wind developers,
10 as much as possible, start those studies as early
11 as possible so they can, in most cases, do more
12 than a year. But we also understand there's
13 circumstances where they may not be able to, or
14 they would otherwise be able to apply for a permit
15 much more quickly.

16 And so trying to be practical, I think
17 that it would be helpful if -- and I'm not sure
18 this can be done to get in the next draft, but
19 with more discussion among developers and
20 biologists, figure out is there a way more clearly
21 for the applicants and the permitting agencies to
22 define the circumstances where a year is enough,
23 or even less than a year. I think there may be
24 those situations. I hope there are, where a year,
25 you know, is required, where two years, three

1 years.

2 Because I think the way the chapter's
3 written now it's probably daunting for applicants
4 in project areas that don't have a lot of
5 sensitive species, and not enough in other areas.
6 And not clear enough distinctions between those.

7 On the role of the scientific advisory
8 committee, again I want to echo Golden Gate
9 Audubon that in order to be unbiased I think it's
10 pretty clear -- at least I'll say this as a lawyer
11 -- it's pretty clear that members of that
12 committee should not be compensated by the
13 applicant. That's a pretty basic conflict of
14 interest.

15 It doesn't mean that they shouldn't be
16 very involved. And obviously it will be the
17 applicant's biologist providing the underlying
18 studies and permit information. But I don't think
19 it's appropriate for them to be on scientific
20 advisory committees.

21 Having said that, when I read this
22 chapter I was, to be honest, a little surprised at
23 how lengthy and, I don't want to say burdensome,
24 but it looked pretty daunting. I could understand
25 why if I were a developer I would look at that and

1 just think, oh, some profanity I won't say here
2 publicly.

3 Again, I think that there is probably a
4 way to break this down into different tiers. And
5 I should, maybe backing up even more, when I
6 really try to think about what are we trying to
7 get at here, what's a reasonable level of
8 involvement for a scientific advisory committee, I
9 think the purpose of this, or this reflects the
10 recognition that the wildlife agencies will never
11 have enough resources to provide this sort of
12 input on every project. I wish they were.

13 Scott, I don't think this comes as news
14 when I say that Fish and Game will never have
15 enough funding to do this. I don't believe Fish
16 and Wildlife Service will, either.

17 So I think that the purpose of the
18 scientific advisory committee is to provide sort
19 of a stopgap, to provide the wildlife information
20 from unbiased experts to help advise counties and
21 applicants about what compliance with these
22 various laws would require; or what would be
23 reasonable under the circumstances.

24 And ideally that takes some burden off
25 the wildlife agencies who don't have the resources

1 to do that. If we could convince the Legislature
2 and Congress to quadruple the agencies' budgets we
3 may not need these committees.

4 But in the absence of sufficient
5 resources of the wildlife agencies we do need
6 these advisory committees. But I think it would
7 be helpful maybe for a subset of folks, or
8 whatever the right size of folks, is to think
9 about a way to have different levels of advisory
10 committees.

11 I know Audubon doesn't have the
12 resources; and I doubt many other conservation
13 groups. There aren't enough biologists to have a
14 separate advisory committee for every project.
15 And I don't think they should all require the same
16 level of involvement by advisory committee.

17 So, I think that area needs some more
18 thought and maybe creative thinking about how to
19 make it work from everyone's standpoint, and still
20 accomplish what I think it's intended to
21 accomplish.

22 The last area that we would recommend
23 some changes, and particularly clarifications, is
24 in the area of long-term monitoring and adaptive
25 management. One of the comments that developers

1 have made repeatedly is about the need for
2 certainty and to cap costs.

3 The idea behind adaptive management is
4 to provide certainty for wildlife or certainty for
5 the biological resources at issue there. And I
6 think there's a tradeoff here between the amount
7 of pre-permitting study and certainty and the
8 amount of post-construction monitoring and need
9 for adaptive management.

10 the more certainty there is at the time
11 of permitting, the less there should be a need for
12 post-construction monitoring or adaptive
13 management. But, where there's a lot of
14 uncertainty, adaptive management, I think, should
15 be recommended. And the way of doing adaptive
16 management, I think, is going to need to be
17 explained to counties, because there are a lot of
18 misconceptions.

19 I think the guidelines do a good job of
20 saying what adaptive management is not. But
21 actually saying what it is and what it requires,
22 which is a lot of monitoring, and very clear
23 goals, and requirements to change management if
24 those goals are not met, I think that is all the
25 more important where there's some amount of

1 uncertainty going into the permit process.

2 So, I would sort of put both of these
3 two issues, the pre-permitting and post-
4 construction permitting back to developers and
5 say, where you draw the line is probably less
6 important than the recognition that it requires a
7 certain amount of certainty. And if you want to
8 get your permit earlier in that process, you're
9 going to have more work to do after the
10 permitting.

11 And more clear requirements for adaptive
12 management and probably less certainty, less
13 ability, you know. Under the Federal Endangered
14 Species Act there is possibly getting no surprises
15 assurances, but you have to have a very high level
16 of certainty about what you're going to do. And
17 the value of your mitigation to compensate for
18 your impacts.

19 So, until we have that level of
20 certainty I think there has to be a tradeoff
21 between your certainty of going in and the amount
22 of adaptive management and monitoring after the
23 fact.

24 The one other point I want to make in
25 this, which I think would probably satisfy some of

1 Audubon's concerns about long-term monitoring, the
2 monitoring after the first couple years the
3 project is built, again I'm trying to be
4 sympathetic to developers' concerns about having
5 to do this forever and ever, for the life of a
6 project. And I wouldn't want to do that, either,
7 if I were a developer.

8 I think the flip side is, though,
9 species are moving. There are articles and
10 studies coming out daily. And that may not be
11 your fault, I understand we want to build wind
12 power to reduce global warming impacts, but the
13 reality is global warming is happening. And
14 species are moving. They're under increasing
15 threat.

16 So, maybe an area, I haven't talked to
17 the wildlife agencies or other folks, but maybe a
18 way to address the need for long-term monitoring
19 would be some sort of permit requirement, and this
20 would only be a suggestion in the guidelines, I
21 understand, but something to the effect of long-
22 term monitoring access shall not be unreasonably
23 withheld from experts designated by I'm not sure
24 who.

25 I haven't thought this through in great

1 detail, but I think I've heard from Audubon
2 members, you know, concerns about lack of access
3 to wind sites. I think if we had confidence that
4 ten years, 20 years after a project was built,
5 even if the developers aren't going to do the
6 monitoring, that someone objective could go out
7 and take a look, we would feel better about it.

8 I don't know exactly how to describe
9 that, but I would like to explore that as a way,
10 maybe, to relieve you guys of the burden of
11 endless monitoring for 20, 30, 50 years.

12 So, those are the four major areas. The
13 last two thing I just wanted to conclude with are
14 I hope that it's in your budget and plans upon
15 adoption of the final guidelines to do a great
16 deal, not just of outreach, but of training.

17 Because as good as these guidelines are,
18 and I'm sure they'll get better, they're really
19 complicated. And I know we all had a lot of
20 questions, and we've been immersed in this for the
21 past year or longer.

22 I think that the permitting agencies are
23 really going to need some help and it's not going
24 to be enough just to hand them a copy of the
25 guidelines. I hope that that is built into your

1 workplan. And I hope that we can all go to at
2 least the State Legislature, if not Congress, and
3 try to get the wildlife agencies more funding.
4 Because I think, even for developers, that really
5 will help the process along if the agencies could
6 be more available, would have more resources to
7 put to this process.

8 And the last thing is just thank you
9 again. You really have done a tremendous job and
10 we appreciate it, and your staff and consultants,
11 as well.

12 PRESIDING MEMBER GEESMAN: Thank you.
13 Stu Webster, representing Clipper Windpower.

14 MR. WEBSTER: Good afternoon. My name
15 is Stu Webster; I'm the permitting environmental
16 manager for Clipper Windpower Development. In the
17 interests of time I'm somewhat notorious for being
18 adjective and adverb laden, so I'm going to go
19 ahead and just read my statement.

20 I wish to first convey to the Board that
21 the nature of Clipper Windpower's approach to
22 environmental issues and concerns with project
23 development is with foresight beyond conducting
24 what is seen as necessary studies and assessments
25 to address the legal due diligence of a project's

1 viability.

2 We feel that the legacy of a given
3 project's construction and operation is a direct
4 reflection on us, as a firm, with wishing to
5 remain viable in a highly competitive industry;
6 and more importantly, a broader reflection of a
7 necessary and appropriate technology in our
8 progress towards diversified and relatively benign
9 energy generation.

10 I further wish to preface the following
11 with the explicit understanding that Clipper
12 Windpower endorses the intent of the guidelines,
13 but takes significant exception to the structure
14 and format that it is currently in, and the
15 implications thereof.

16 Upon review of the guidelines and
17 materials and minutes of the workshops taken place
18 thus far, I felt that disconnect had occurred with
19 the original intention of the CEC's guidelines to
20 appropriately facilitate a consistent and robust
21 understanding of what can be done to understand
22 the biological characteristics of a proposed wind
23 energy area with what is currently drafted.

24 At the expense of being perceived as
25 disrespectful of what has been accomplished to

1 date, and while acknowledging what can only be
2 described as a daunting task, I wish to make a few
3 suggestions.

4 As I understand it, the intent of the
5 guidelines was meant to address concerns
6 surrounding wind industry's perceived or real
7 development without sufficient attention given to
8 certain environmental concerns, namely avian and
9 bat impacts.

10 I attended a scientific conference on
11 these concerns in November and absorbed a
12 considerable amount of information from academics,
13 government agencies and nongovernmental
14 organizations. The take-home message was the
15 acknowledgement of wind energy's importance to our
16 nation's interest, domestic as well as foreign;
17 but the need for caution in advancing the
18 development of this industry in light of possible
19 avian and bat impacts.

20 It is the notion of caution that creates
21 an enormous hurdle for this document and this
22 process to overcome with these guidelines.

23 The idea of industry is to enter perfect
24 markets with transparent information that helps to
25 assess costs and benefits. Since markets are

1 rarely, if ever, perfect and information generally
2 shades the transparency of the ideal, industry
3 modifies its activities accordingly with the
4 explicit intent of maximizing its interests.

5 The guidelines, as currently drafted,
6 impact this component of wind industry's market
7 considerations in a profound way relative to
8 California's wind energy development.

9 Industry needs certainty, but these
10 guidelines introduce uncertainty. Voluntary
11 guidance is a proven tool for government to use to
12 encourage consistent, viable and innovative means
13 for industry to address environmental interests
14 and concerns.

15 However, the language of the guidelines,
16 as currently drafts, are too rigid and
17 prescriptive, even if only by perception of the
18 user of the guidelines, and not necessarily the
19 intent of the authors. And therefore, it invites
20 an interpretation that the guidelines are to be
21 adhered to rather than utilized by the
22 stakeholders of wind projects development.

23 Without the clear understanding of what
24 is necessary and what is not, again, the
25 guidelines can be interpreted by a lead agency as

1 necessary by virtue of how they were drafted, even
2 though they were intended to be voluntary, has an
3 added element of judging whether or not a proposed
4 project is viable. This seems a negligible
5 matter, but, in fact, will be a major
6 decisionmaking point for industry's entry into the
7 California RPS market, as the implied cost to
8 comply with the guidelines singular path of
9 assessment is very costly, and not necessarily
10 applied uniformly.

11 I would encourage the CEC to consider
12 this and refocus the content of the guidelines to
13 be more robust. A menu of options and conditions
14 by which stakeholders become more informed and
15 actually sort of what I've been hearing so far
16 from today's comments.

17 This is not a substantial undertaking,
18 as the content of the guidelines thus far compiled
19 contains an incredible amount of useful
20 information. Rather, the presentation of the
21 material and lack of qualifying, the
22 circumstantial applicability of the information is
23 problematic for reasons of misinterpretation as
24 policy rather than guidance.

25 As detailed in my comment submittal last

1 month terms such as standard and method have a
2 very strict definition within the context of
3 environmental law, and imply a more rigid meaning
4 than should be intended for these guidelines.

5 Additionally, the creation of the
6 scientific advisory committee, without substantive
7 qualification of its purpose or limits of
8 influence, invites its possible evolution as an
9 unfunded mandate for lead agencies under CEQA to
10 implement regardless of its necessity.

11 Finally, the nature of policy
12 administrators is not to reinvent the wheel of
13 policy while doing the right thing. Ergo, place
14 possibly inappropriate weight to the guidance
15 worst case scenario -- pardon me, guidelines
16 essentially assuming the worst case scenario.

17 The probably of which is less than likely
18 when one references the entire body of project
19 development in California to date.

20 Therein lies the uncertainty. Will my
21 next project have to invest considerably more
22 funds to conduct an assortment of unnecessary
23 studies in lead agency X's jurisdiction while my
24 regional competition does not have to in a lead
25 agency-wise jurisdiction.

1 This question seems rhetorical, but is
2 one of many that are raised by these guidelines,
3 rather than providing a resource where an answer
4 to questions such as these can be found.

5 Thank you.

6 PRESIDING MEMBER GEESMAN: Thank you.
7 My next blue card is filled out by three people.
8 I think that Cal Wind Energy Association wanted to
9 make a panel presentation. Nancy Rader, Anne
10 Mudge and Jim Newman.

11 MS. RADER: Good afternoon, everyone.
12 My name is Nancy Rader; I'm Executive Director of
13 the California Wind Energy Association. Our
14 members include about a dozen wind energy
15 development companies listed up there that have
16 been actively engaged in wind projects in
17 California; and which collectively account for
18 about 80 percent of the 2200 megawatts of wind
19 energy capacity that's under RPS contract so far.

20 CalWEA's members have been very actively
21 involved in this process, and many of them have
22 taken the time to come up today. You've already
23 heard from Stu.

24 We're grateful to have had the
25 opportunity to participate fully throughout this

1 process, which we have. But we're very
2 disappointed that it seems virtually none of our
3 comments and suggestions are reflected in the
4 staff draft. And so while we did have a very
5 productive discussion at the last workshop we
6 really can't be confident that we will be heard
7 the next time around, either.

8 The staff draft, if adopted, would have
9 very harmful consequences on wind development in
10 California, which in turn would deal a significant
11 blow to the state's ability to meet its renewable
12 energy and carbon reduction goals.

13 While the Air Resources Board considers
14 early action measures, ways to jump-start the
15 state's carbon reduction goals, this document
16 would take a step in the opposite direction by
17 putting a ball and chain on wind energy
18 development. And it would do so by opening the
19 door to uncertainty and significant delays in the
20 permitting process, and to justify an open-ended
21 study and mitigation costs.

22 And staff missed the opportunity, as we
23 recommended, to streamline the permitting process
24 for projects that can reasonably be presumed to
25 have less than significant impacts under CEQA,

1 similar to what the Commission has the authority
2 to do and what it has recently done for gas
3 projects.

4 The document is not fully baked, and
5 frankly, we think the batter needs to be remixed.
6 These guidelines are just too important to
7 California's energy and environmental goals, and
8 this draft is too far from the mark for the next
9 draft to be labeled final and subjected to a
10 Committee vote with adoption by the Commission a
11 few weeks later.

12 Therefore, we urge you to extend the
13 timeline by three months to allow for a revised
14 staff draft to be prepared aiming for adoption in
15 September.

16 I want to emphasize that CalWEA does not
17 object to conducting whatever studies may be
18 appropriate at any given time, at any given site,
19 to determine impacts under CEQA. What we do
20 object to is the arbitrariness which may lead to
21 increased costs without contributing to the
22 protection of bird and bat species in California.

23 I wanted to invite Anne Mudge, a lawyer
24 who specialized in wind project siting, and Jim
25 Newman, a wildlife biologist with considerable

1 project-siting experience, to come up and talk to
2 you, to explain specifically the problems that we
3 have with the draft.

4 Anne. Now, to get on the right slide.
5 There's your slide.

6 MS. MUDGE: Good afternoon. Anne Mudge;
7 I am a CEQA lawyer and I work with wind companies
8 to permit projects and other companies to permit
9 projects under CEQA throughout California. So I'm
10 pretty intimately involved on the ground with
11 local permitting agencies. And in the case of
12 wind it's almost always counties. There are very
13 few cities that permit sizeable wind projects in
14 California.

15 And the first thing that I wanted to
16 stress is, you know, having been doing this for
17 quite some time, about 20 years now, whenever
18 agencies put out guidelines and call them
19 voluntary, they inevitably end up moving towards a
20 mandatory type of implementation, no matter how
21 voluntary they are stated to be.

22 And even if they're not mandatory, they
23 turn out to be what people call directory. And so
24 they take on a great deal of sort of authoritative
25 weight in the process. And for that reason I

1 think we need to get them right.

2 So, you know, I personally have felt
3 that some kind of standardization of pre-
4 permitting and post-permitting methodologies is
5 useful. But I really do think that if we're
6 moving in this direction we need to get these
7 right.

8 So, one of the things that jumped out at
9 me that is most problematic from this draft is the
10 scientific advisory committee on a project-
11 specific basis. And I was heartened to hear Julia
12 say that she also could see how that could be
13 problematic, because I really do think that that
14 needs to be re-thought.

15 Particularly I think it's, from a
16 project-specific basis, not only is that a very
17 inefficient way to permit projects, but as far as
18 I'm aware it's unique in California. I'm aware of
19 no other development project type in all of
20 California development law that requires a
21 project-specific scientific advisory committee
22 that would have this level of input.

23 And so although I could see a committee
24 convened, for instance, on a regional or statewide
25 level that would be available for consultation at

1 the request of the lead agency. That makes a lot
2 of sense to me. But a project-specific scientific
3 advisory committee that would weigh in on each and
4 every wind project in California is very
5 inefficient.

6 PRESIDING MEMBER GEESMAN: What would be
7 the basis for distinguishing between a regional
8 committee and a statewide committee? Are there
9 really inherent differences that would argue
10 against having a statewide committee?

11 MS. MUDGE: You know, it's a good
12 question, Commissioner Geesman. I haven't thought
13 that through in a great deal of detail. You know,
14 different wind resource areas, though, really do
15 have different biological characteristics.

16 So, you know, if there were only one
17 advisory committee on a statewide basis, they
18 would have to be familiar with those regional
19 differences. I think that regional committees
20 could serve the same function.

21 I would be in favor of less bureaucracy
22 rather than more. So, if there were only one
23 committee they would have to be encouraged to take
24 a regional perspective, because I think these
25 guidelines are going to be -- need to be

1 implemented differently depending on which wind
2 resource area you're talking about.

3 PRESIDING MEMBER GEESMAN: Well, I
4 certainly understand that. But what I'm not clear
5 on is whether the nature of the scientific work,
6 itself, is so regionalize that a scientist, a
7 biologist, for example, would have to have had
8 prior experience working in that specific resource
9 area before his or her contribution would be
10 considered of value.

11 MS. MUDGE: I think that's a fair
12 question and I think I'm going to put that to a
13 biologist.

14 PRESIDING MEMBER GEESMAN: And I'd
15 invite anybody else to either comment today or
16 include that in your written comments.

17 MS. LEVIN: May I just respond quickly.
18 I do think you'd want to have at least regional
19 scientific advisory committees because the
20 resources vary a lot, the wildlife vary a lot. It
21 would be easier then to consider cumulative
22 impacts and development patterns and all of the
23 other things that go into cumulative impacts
24 assessment.

25 And I don't think it would be realistic

1 for one committee to provide advice, assistance,
2 guidance on every single project statewide, even
3 if you know the biological differences existed.

4 MS. MUDGE: So the other point I wanted
5 to just stress about these scientific advisory
6 committees is that they should be serving as
7 experts to the lead agencies who are making the
8 final decisions on these permitting projects.

9 And I think, in terms of the lead agency
10 folks that I've talked to, they are pretty
11 sensitive about these guidelines trying to usurp
12 local permitting decisions.

13 And I've heard them say, you know, they
14 would really like to have the resources to go to
15 at their request. When they have questions they
16 already turn towards CDFG and U.S. Fish and
17 Wildlife Service. And they would like to continue
18 to have that same relationship, rather than having
19 scientific advisory committees make decisions
20 about what are really permitting decisions.

21 And I think places in the guidelines
22 that I was particularly troubled where the SAC was
23 given quite a bit of approval authority was on
24 pages 11, 53 and 60. There was some troublesome
25 language there about scientific advisory

1 committees having approval authority over pre-
2 permitting decisions.

3 Lastly, you know, one of the really
4 tough things about this whole process is trying to
5 marry CEQA and the wildlife compliance laws. It's
6 a very very murky area. I think these two, that
7 CEQA and the wildlife compliance laws, in
8 particular the Migratory Bird Treaty Act and
9 certain laws related to fully protected species,
10 don't speak to each other. Because you have
11 strict liability for some of them; and CEQA allows
12 the significant impacts to occur where there are
13 overriding benefits to come out of it. And I
14 think wind is a great example of a environmentally
15 overridingly beneficial kind of energy
16 development.

17 So what I'm concerned about seeing here
18 is an attempt to have wind companies comply with
19 zero tolerance wildlife laws, which is frankly not
20 possible, through adding another layer on the
21 permitting process that will not, in the end, in
22 fact sufficiently reduce impacts to birds. And I
23 think that's what we all want to do.

24 So, I don't want to see these become a
25 proxy for what is not possible. And Julia

1 mentioned the need for perhaps some legislative
2 changes. And I agree with that. That right now
3 these sets of laws really don't speak to each
4 other very well. And we have to be very careful
5 in trying to make them speak to each other through
6 these guidelines in a way that doesn't really
7 work.

8 Thank you.

9 DR. NEWMAN: Thank you, Anne. My name
10 is Jim Newman and I'm a wildlife biologist for
11 Pandion Systems. I graduated from UC Davis, which
12 seems to be a source of a number of resources for
13 this group. I've been working on wildlife issues
14 probably for the last 30 years with special
15 attention or expertise in the area of avian
16 interaction with transmission power lines; and
17 more recently in the last six years with wind
18 projects.

19 And I've also been involved in
20 developing siting guidelines for both -- I mean
21 guidelines for both siting and licensing of
22 powerlines and transmission lines -- excuse me,
23 power plants.

24 And just a point of interest, I'm
25 involved with a project in the State of New York

1 where they're trying to tackle that question of
2 which energy -- what's the comparative mortality
3 of wind as an energy source compared to coal, oil,
4 gas, nuclear and hydro.

5 Because some of those questions are
6 raised when you come down to the final decision,
7 what is your best alternative. And that project
8 is being funded by the State of New York; and the
9 information will be available, the report should
10 be available by August. So that's something you
11 might want to track, or, you know, contact me for
12 further information on.

13 Again, as other people have said, I
14 really appreciate and understand to some extent
15 the effort that has been put into putting these
16 guidelines together. And although it's a short
17 period of time for California, -- I mean, excuse
18 me, it's a long period of time for California --
19 let me reverse -- anyway, other states are trying
20 to do this in a much shorter period of time
21 without the kind of systematic discussion and
22 workshops.

23 And I think everybody's aware, or should
24 be aware that what comes out of here will be used
25 as models in other parts of the country. So,

1 obviously important for us, but it has great
2 visibility and importance outside of Florida.

3 MS. SPEAKER: California.

4 DR. NEWMAN: Excuse me, out of -- oh,
5 that was a Freudian slip.

6 MS. SPEAKER: He's from Florida.

7 DR. NEWMAN: I'm from Florida. And,
8 again, my comments are really made not as
9 criticisms, but as ways to improve the guidelines
10 and a number of the points that Dick has made seem
11 to answer some of the issues or questions that we
12 have.

13 I guess in terms of what the guidelines
14 should be, there's a couple of over-arching
15 issues, or terms that at least influence my
16 practical application or understanding of the
17 guidelines. And Anne has talked about the CEQA
18 and the SAC role and defining significance and
19 non-significance.

20 There is also, which I am pleased to
21 see, a number of references within the guidelines
22 to such things as estimates for reasonably
23 accurate, unanticipated mortality, levels
24 appropriate for pre-assessment, and the terms
25 high, medium and low.

1 And the executive summary talks about
2 the purpose of the guidelines to minimize impacts,
3 not to eliminate impacts. Because we all know
4 you're going to have some mortality regardless of
5 what you do with wind turbines. And I think that
6 needs to be sort of kept in mind in terms of when
7 we are looking at the studies and what kind of
8 information we're trying to derive from those
9 studies.

10 I think it's important to look at,
11 consider the accuracy of the studies. I think we
12 tend to, as biologists, start looking for
13 precision. And, really, does it make a difference
14 if you have 3.5 birds per turbine a year, or 4.6?
15 If it went up an order of magnitude, that would be
16 important.

17 But if you also look at the information
18 from other wind turbines in Florida -- actually
19 we're trying to put one in -- and throughout the
20 country, there's a range of about zero birds to
21 ten birds per turbine per megawatt per year.
22 That's not one species; that's just a combination
23 of whichever birds are at risk.

24 So there is this range or threshold that
25 mortality occurs in. And it would seem to me it

1 would be important for the objective of the
2 methods to try and understand if the proposed
3 project is exceeding what is considered normal.

4 Now, that's going to be a pretty big
5 challenge because there's these policy issues
6 about Migratory Bird Treaty Act and you can't have
7 mortality, and the biological significance. But
8 it doesn't as much within birds. Bats are a
9 different story. You can get orders of magnitude
10 difference in mortality depending upon the
11 conditions.

12 So, at this moment I don't have any
13 specific recommendations of how to weave that
14 concept in, that we're dealing with some
15 mortality; it's probably going to be within a
16 range; what kind of studies do we need to do to
17 make it -- to determine what that mortality is.
18 What level -- do we need some sort of level of
19 precision, or do we need to be accurate, that
20 these birds are at risk and therefore we need to
21 mitigate for them.

22 There was some discussion or Dick
23 mentioned about reorganizing some of the sections,
24 and I would agree with that. As a biologist I was
25 sort of looking for standard methods book so I

1 could go in and figure out what I need to do
2 really quick.

3 And there's a number of sections where
4 you have policy and methods woven together. And I
5 would recommend that you separate the two out.
6 For example, the biology sections of 3, 4, 7 and 8
7 be combined. And also recommend, which has been
8 suggested, that before the methods you have some
9 discussion of where and how these can be used.
10 Right now they're sort of separated between
11 chapter 3 and chapter 8.

12 The last point is that I would like to
13 see more flexibility in the guidelines. And what
14 I'm looking for or recommending is right now we
15 have flexibility in terms of the size of the
16 project; you have low, medium and high, depending
17 upon the number of turbines.

18 There's also recognition of the ability
19 to use data from existing data sources, although
20 there's a five-year time limit put on that. And
21 that needs more further analysis because I think
22 there's older data that can be just as useful as
23 more recent data. And there's also the
24 recognition of using data from adjacent
25 properties.

1 That is all well and good, but what I
2 think also needs to be added to the guidelines,
3 emphasized more are some of the biological
4 conditions that are going to dictate what kind of
5 methods you're going to use. And I would
6 recommend that possibly like a hierarchy, and
7 maybe this is something that Dick was referring
8 to, where you first try and identify what species
9 are at risk in a particular wind resource area.

10 Are these species -- of these species,
11 which one have too high a risk. Again, that's
12 going back to this concept of threshold and
13 acceptability. But I think you don't need to go
14 collect information on every species if they're
15 not the species of concern.

16 And thirdly, is do these risks need to
17 be qualified, or can you qualitatively describe
18 them as being a certain species has a higher risk
19 of mortality than another species.

20 If you're dealing with an endangered
21 species you really need to know exactly how many
22 birds are likely to be killed. And that's just a
23 different view, but it has to do with the -- and
24 if you need to do that, then you need to really
25 quantify your information.

1 I looked for some guidance on how to
2 handle this. If you go through those questions
3 you're going to end up with saying, I need to
4 collect this kind of data. To collect this kind
5 of data, this is how the data's going to be used
6 or interpretation of the decisionmakers, and if
7 this is this is the kind of data being collected,
8 then these are the kind of methods I need to use
9 to collect it as opposed to starting off, these
10 are the methods and this is, you know, I mean it's
11 a good approach,¹ but I think we need to kind of
12 winnow it down because you can end up, you know,
13 spending money on sampling that may not be
14 necessary. And increasing the cost and time, and
15 not necessarily contribute to understanding the
16 bird and bat risks.

17 And the Australian Wind Energy
18 Association has, as an example, a set of interim
19 guidelines that has sort of a hierarchy of how you
20 go down and sort of identify what species you're
21 looking at, what the risks are. And then as you
22 identify it, if the risks are great, or there are
23 significant species that are going to be
24 potentially impacted then more detailed studies
25 are done.

1 So I would suggest some sort of decision
2 tree that would take you down to help you point
3 out, or helping me point out what kind of message
4 that should be used.

5 Thanks.

6 PRESIDING MEMBER GEESMAN: Thank you.
7 Anne, I had a question; and I wonder if -- it may
8 be best to address it in your written comments,
9 and if so, that's fine.

10 I understand the distinction between
11 CEQA, the zero tolerance Endangered Species Act,
12 or Migratory Bird Treaty Act. I wasn't clear on
13 what you would like the guidelines to do.

14 You criticized the staff draft for
15 conflating the two sets of statutes; and you
16 indicated that you thought Julia was right in
17 contemplating legislative change. That's beyond
18 our power.

19 Our desire is to adopt guidelines that
20 apply under current statutes. If the Legislature
21 chooses to change the statutes, that's fine, but
22 that's a separate discussion really.

23 Under current law what would you have us
24 do to address the concern that you raise?

25 MS. MUDGE: Well, let me say that I

1 think my concern is that because you cannot
2 address full compliance with some of the strict
3 liability laws, there seems to be an attempt here
4 to make these guidelines a proxy for that. And to
5 add another layer to the permitting process as a
6 substitute for that inability to comply.

7 And I don't think that's a good idea. I
8 think we should be trying to minimize bird and bat
9 kill to the best of our ability. I think that's a
10 good goal. I don't think anybody in this room
11 would disagree with that.

12 And I'm not convinced that what the
13 guidelines currently say is actually going to
14 reduce bird and bat mortality. I think it's a
15 full employment act for lawyers and consultants
16 until we really home it in. I mean I think it's
17 great; I mean, people are going to have to unravel
18 these things for a long time. And I don't think
19 that's good for the industry.

20 So, you know, I think that to the extent
21 that we can standardize protocols for study so
22 that there can be ways to compare data across
23 sites to try to see what is considered a high bird
24 mortality area versus low bird mortality areas
25 that would give industry guidance on areas to

1 avoid.

2 So, I think standardization in protocols
3 is a good thing. I think trying to inject a
4 permitting layer such as the scientific advisory
5 committee on a project-specific basis just adds
6 bureaucracy, time and expense in a way that is
7 trying to substitute for compliance with the zero
8 tolerance laws that, to me, is not an effective
9 way to go.

10 And I understand that, you know, there's
11 a frustration that you can't completely comply
12 with the wildlife compliance laws. There is
13 mortality with wind projects. And it funds afoul
14 of these strict liability laws. The guidelines
15 can't solve that problem.

16 So, instead of injecting another layer
17 on the permitting process, trying to get the best
18 information.

19 MS. WARD: Can I ask a follow-up to
20 that?

21 PRESIDING MEMBER GEESMAN: Okay.

22 MS. WARD: We were just --

23 PRESIDING MEMBER GEESMAN: You should
24 introduce yourself, Misa.

25 MS. WARD: Yeah, Misa Ward with the CEC.

1 We just wanted to get more clarity on what the
2 extra layer was. Was it mainly the SAC formation,
3 or are there other elements that seem adds another
4 layer? Can you describe --

5 MS. MUDGE: I'd say it's, from my
6 perspective, the SAC layer the way it is currently
7 drafted. That the applicants would have to go for
8 permission to do particular things at a lot of
9 different junctures in the process, is a very
10 burdensome process. Very burdensome.

11 I mean the lead agencies already provide
12 that type of guidance. And if they need advice
13 they could go and ask for it. But to inject that
14 in on a project-by-project basis is very
15 burdensome.

16 PRESIDING MEMBER GEESMAN: Paul, you
17 need to introduce yourself.

18 MR. VERCRUYSEN: Paul Vercruyssen from
19 the Center for Energy Efficiency and Renewable
20 Technologies.

21 MS. SPEAKER: Paul, either that's not on
22 or you're not close enough.

23 MR. VERCRUYSEN: Oh, yeah, I'm sorry.
24 Paul Vercruyssen from the Center for Energy
25 Efficiency and Renewable Technologies. This has

1 been kind of an ongoing debate throughout this
2 process.

3 In the first round of comments that
4 CEERT submitted we proposed sort of a general
5 statement for what we thought the goal of these
6 guidelines should be, which is that CEERT believes
7 that these guidelines should represent a
8 substantive measure of best management practices
9 and all practical efforts to comply with the
10 spirit of all laws protecting avian and bat
11 species; and should be explicitly recognized as
12 such.

13 Additionally, these guidelines will
14 necessarily guide the use of prosecutorial
15 discretion for regulatory agencies.

16 And we'd like to see language to this
17 effect in the guidelines to the extent that the
18 agencies feel comfortable with that.

19 You know, from Julia and Carl Zakeller
20 (phonetic) from the Sierra Club, who was also at
21 the last workshop, I think there's recognition
22 that complying with the letter of these laws is a
23 problem. So these guidelines are, I think, a way
24 to try and address that without actually changing
25 the laws, which would be a much taller order at

1 this point.

2 So, you know, people are free to comment
3 on that, as they wish. But I think that's kind of
4 a reasonable way to move forward with, as an
5 understood assumption of what we're going for.

6 PRESIDING MEMBER GEESMAN: Well, if I
7 understand some of the comments correctly, when
8 you read the phrase in the staff draft scientific
9 advisory committee many of you are reading
10 scientific decisionmaking committee. And I
11 believe that at least some of you find that
12 objectionable. Paul?

13 MR. VERCRUYSEN: If I could kind of
14 speak a little bit further to that point, you
15 know, you have, I think, one of the problems with
16 the draft is that there's a lot of different ways
17 to interpret it.

18 When I mentioned to Dick our problems
19 with it, he said, well, think of them more as
20 consultants. But clearly the document doesn't
21 read that way. I think people feel much more
22 comfortable getting scientific input. But the way
23 that you read the guidelines right now, it's an
24 approval by, more than anyone else, I think the
25 counties are going to have a problem with that.

1 And they're not even really a part of this
2 conversation right now.

3 But, you know, other people have alluded
4 to the fact that usurping their authority could be
5 really problematic in actually making these a
6 useful tool and getting them put into use in
7 California.

8 MS. LEVIN: Can I just clarify --

9 PRESIDING MEMBER GEESMAN: Julia.

10 MS. LEVIN: -- a few things? I'm not
11 sure which of these --

12 (Laughter.)

13 PRESIDING MEMBER GEESMAN: I believe
14 it's the silver one that amplifies.

15 MS. LEVIN: Okay. First, I want to be
16 very clear that I think what the proposed changes
17 in the legislation that Anne is talking about are
18 not the ones I was proposing. Although there may
19 be some overlap.

20 I do agree with CEERT's recommended
21 purpose for the guidelines. And I think to reduce
22 impacts on birds in the wild you have to look at
23 the wildlife laws and what they say.

24 Having said that, I think we all agreed
25 at the last workshop, I believe we all agreed,

1 that the guidelines, the final draft should
2 clarify that while they can't grant prosecutorial
3 discretion there was language in the Fish and
4 Wildlife Service guidelines about how they've used
5 them in the past, so it's past tense. And the
6 lawyers thought that would be okay. Basically to
7 indicate that while the Commission can't say this
8 satisfies your compliance with these laws that
9 allow no take, that most likely there would be
10 prosecutorial discretion and you won't be
11 prosecuted if you're complying with the
12 guidelines. You know, maybe not even to the
13 letter, but in spirit.

14 I think that would be really helpful to
15 include. I think we all agree that any
16 references, any words like approve in regard to
17 the scientific advisory committee are
18 inappropriate. That it should -- there are a few
19 places where it's asked to approve of things. And
20 I don't think that's in a permitting sense, but I
21 understand why that could be misleading; and
22 particularly for the permitting agencies,
23 upsetting.

24 I think with those changes, though, that
25 should satisfy the concerns that industry and

1 others are raising. But I don't think that you
2 should throw the baby out with the bathwater and
3 go back to only looking at CEQA. Because I think
4 that would really defeat the larger purpose here.

5 And I don't think that that's necessary.
6 Nor do I think -- and the one thing said earlier
7 is I do think in the long run, in a perfect world,
8 the state, you would adopt the guidelines; we
9 would try them out for a few years; see what's
10 working, what's not. Probably revise them at some
11 point.

12 And then go to the Legislature and say,
13 okay, we would like a legislative waiver to the
14 fully protected species Act and with Congress and
15 the Migratory Bird Treaty Act. I don't think we
16 could do that now even if we wanted to. Certainly
17 Audubon wouldn't support that because we don't
18 know enough about how much should be done on the
19 ground to get that waiver.

20 We need a trial period for awhile, but I
21 really do think that that should be the long-term
22 goal, and then there wouldn't be this conundrum of
23 trying to reduce impacts where really no impacts
24 are allowed legally. But I think we have to take
25 this as an interim step to get to that point.

1 MS. MUDGE: You know, I don't think I
2 disagree with anything that you've said. And I
3 think my point is adding ineffective burdens to
4 the permitting process is not a good way of
5 getting in compliance with the wildlife laws.

6 And the most obvious example of the
7 ineffective burdens is the project-specific SAC.
8 So that ties it up for me. That's where I'm
9 coming from.

10 If the guidelines would have an express
11 statement about prosecutorial discretion I think
12 that would be very helpful. I personally would
13 welcome that.

14 ASSOCIATE MEMBER PFANNENSTIEL: I just
15 want to make sure that I understand, really when
16 you talk about the added layer of bureaucracy, it
17 really is the project-specific science advisory
18 committee? That's specifically what you're
19 talking about?

20 MS. MUDGE: That is one of the most
21 burdensome aspects of the guidelines as they are
22 currently written. There are other aspects. And
23 we've got very detailed written comments.

24 ASSOCIATE MEMBER PFANNENSTIEL: Okay.

25 MS. MUDGE: But, you know, if I had to

1 focus in on one thing, that would be the thing
2 that I'd hammer home.

3 PRESIDING MEMBER GEESMAN: Let's get
4 somebody else up here.

5 (Laughter.)

6 PRESIDING MEMBER GEESMAN: Krista Kisch,
7 UPC Wind Management. I hope I pronounced that
8 correctly.

9 MS. KISCH: Thank you. My name is
10 Krista Kisch; I'm a business development director
11 with UPC Wind Management. And I just would like
12 to make some high level comments today.

13 UPC Wind is a wind project developer.
14 We're active across North America. And we're very
15 much in favor of responsible wind energy
16 development, as it pertains to the siting and
17 minimization of first impacts to bats and birds.

18 What our experience has shown us,
19 though, across the country is that avian concerns
20 are highly site-specific. And as such, as a wind
21 developer in California, we believe that we are
22 looking for reasonable guidelines in the data
23 collection, interpretation and post-construction
24 monitoring of a project.

25 And just as a general example what we've

1 found, we've seen everything from projects in San
2 Gorgonio Pass, for example, where there's
3 obviously an established history of wind farm
4 development, the Bureau of Land Management is
5 often the lead agency. And, in fact, they will
6 often come to us and just request things like
7 desert tortoise survey or fringe-toed lizard
8 survey. And no see a need for avian or bat
9 studies.

10 On the other hand, we have a wind
11 project on the Island of Maui, and obviously as
12 many people know, this is a highly biodiverse
13 island. And we've done everything from, you know,
14 a year of preconstruction surveys to implementing
15 a habitat conservation plan that lasts over the
16 20-year life of the project to monitor and insure
17 that were compliant with, you know, protecting for
18 federally endangered species.

19 So, what I'm trying to demonstrate is
20 that the range of habitat and avian and bat
21 concerns really is quite diverse. And as a
22 project developer, it's very helpful to have very
23 procedurally clear and streamlined process so that
24 you understand what you need to study, when you
25 need to study it, and what the actual outcome will

1 be at the end.

2 And so I believe what we're seeing right
3 now is that this guidance is not in effect, nor is
4 there a clear procedure to permit a project in the
5 State of California.

6 I guess again as a developer that works
7 across the country we're looking for obviously to
8 be responsible in the development of our projects,
9 but also looking to minimize the risk. And that
10 is by, you know, following voluntary guidelines
11 or, you know, programmatic EIS guidelines that the
12 Bureau of Land Management has.

13 We really see a process that's in place
14 that allows us to permit a project responsibly,
15 while also getting it constructed.

16 And what we see here is just a lot of
17 risk, a lot of third parties, and oversight that
18 can potentially open us up to litigation or just
19 delaying a project's development.

20 And, again, with the potential to have a
21 project delayed, we're really looking at the fact
22 that the State of California has a renewable
23 portfolio standard that by 2010 has certain
24 mandates that the state needs to meet.

25 And looking at the permitting process as

1 it stands right now, I don't see how any new
2 projects would potentially be permitted in that
3 timeframe.

4 And so finally, we are requesting and
5 supporting the California Wind Energy
6 Association's request to extend the timeline by 90
7 days so that there's more thorough consideration
8 of the wind industry's thoughts on the best way
9 to, you know, improve the staff guidelines with
10 the goal of adopting a final draft in September
11 '07.

12 PRESIDING MEMBER GEESMAN: Thank you.
13 Michelle Conway, Oak Creek Energy Systems.

14 MS. CONWAY: Hi. Thank you for the
15 opportunity to participate and comment. Oak Creek
16 Energy Systems is developing the 1500 megawatts
17 project that was announced by SCE in December.
18 And therefore we're going to be playing a
19 significant role in meeting the statewide AB-32
20 standards and the RPS.

21 Oak Creek is very committed to
22 protection of the environment and wildlife and
23 habitat; and we're very encouraged to be working
24 with everybody here, because we're all united in
25 the same goal. And that is protection of the

1 environment.

2 However, we cannot support the staff
3 draft as currently written. First of all, even if
4 the document is labeled as voluntary, we don't
5 feel that in its implementation it will be.

6 For example, there have been conflicting
7 messages in the workshops and in the draft,
8 itself, that it won't be voluntary as implemented.
9 For example, the draft states that the science
10 advisory committee will dictate sampling
11 protocols. It goes beyond toolbox or guidelines
12 and puts pressure on the lead agencies, as CalWEA
13 explained.

14 We also feel that the draft is unduly
15 burdensome on the wind industry. The data
16 collection required is not proportionate with our
17 impact on the environment, nor does it account for
18 differences among project sites, geography, the
19 ecosystem.

20 No other industry in California, to our
21 knowledge, is being similarly burdened. For
22 example, in the Tehachapi area we've been doing
23 bird and bat studies for years. We have a lot of
24 good historical data, but under this current draft
25 it limits us to the past five years.

1 CEC already conducted a multi-year bird
2 mortality study in the area and concluded that the
3 mortality was low in the Tehachapi area. We are
4 not within a known raptor movement corridor; no
5 bats have ever been killed on Oak Creek property.

6 And the protocol of our organization is,
7 of course, to work with Fish and Wildlife and the
8 conservation groups.

9 And the reason why we don't agree with
10 the science advisory concept is that the concept,
11 as presented, wrongly assumes that lead agencies
12 are incapable of obtaining objective scientific
13 opinions. That each of the organizations
14 designated to serve on the committee place a
15 priority on wind development. And that each of
16 the entities have qualified staff and resources
17 available to participate.

18 Myself, personally, I've been involved
19 in permitting wind projects for over five years
20 and there have been at least one or two projects
21 where I could not get the lead agency and Fish and
22 Game to agree or to even meet in the same room, as
23 much as we tried. So, we're really anticipating
24 that in real-life permitting situations there's
25 going to be a lot of problems using the SAC on a

1 project basis.

2 In conclusion, we agree with CalWEA that
3 we need an extension on the draft to work some of
4 this out. We believe in quality of the studies,
5 not necessarily quantity. And we want flexibility
6 to be worked in; we don't want it to be a
7 cookbook. We want to make sure that we look at
8 the particular ecosystems and we be allowed to
9 focus on other environmental issues, not just bird
10 and bat. We don't want to be distracted from the
11 total picture of what's going on at each
12 particular site.

13 Thank you.

14 PRESIDING MEMBER GEESMAN: Thank you
15 very much. Brenda LeMay.

16 MR. SPEAKER: She stepped out a minute.

17 PRESIDING MEMBER GEESMAN: Let me go to
18 Greg Blue, enXco.

19 MR. BLUE: One more PowerPoint. Always
20 have to have a PowerPoint.

21 Good afternoon. My name is Greg Blue
22 with enXco Development Corporation. First of all,
23 I'd like to welcome the Commissioners to
24 Livermore. This is basically the start of
25 Altamont Pass, or the beginning of Altamont Pass.

1 And in some ways it was Altamont that started this
2 whole journey, and where it's bringing us back
3 again today.

4 California, and especially this
5 Commission, have been champions of wind energy in
6 California, particularly with management of the
7 RPS programs, of the mandated RPS goals. The 2006
8 Energy Policy Report update, in which this
9 Commission found many barriers to renewable
10 development, and in fact advocating breaking down
11 a lot of those barriers, we think it's very
12 important.

13 Unfortunately, as this draft is written
14 today, and this is part of the problem we have is
15 we're commenting on something we know is going to
16 be revised; we don't know what the revisions are
17 going to be. So a lot of the comments you're
18 hearing today we believe are going to be
19 addressed. Just don't know yet. And a lot of the
20 comments I'm going to make have already been
21 addressed, but I'm going to kind of go over some
22 of them anyway.

23 enXco is a California-based company
24 which is -- since 2003 enXco has developed,
25 successfully developed and permitted about 40

1 percent of all the online wind projects here in
2 California.

3 We currently are going to have 450
4 megawatts to be permitted in 2007. With another
5 3000 megawatts in the development pipeline towards
6 meeting California's RPS goals.

7 enXco is a board member of CalWEA, CEERT
8 and IEP, and we are an affiliate of the EDS group
9 from France. enXco has been and continues to be
10 very proactive on the avian issues, as has been
11 attested to by the Sierra Clubs and the California
12 Audubon Society in these workshops.

13 And we support a properly structured set
14 of workable voluntary guidelines for reducing
15 avian impacts in California, which include an ad
16 hoc, and that's the key word in this, ad hoc
17 statewide science advisory committee that would be
18 consulted on an as-needed basis. And we heard
19 discussion earlier today about maybe some regional
20 committees. I don't think we would be opposed to
21 regional committees similar to the six regions of
22 the California Department of Fish and Game.

23 Again, no approval rights. The word
24 approval, as we've heard mentioned, we don't agree
25 with that. We support a maximum of one year

1 preconstruction studies, meaningful
2 preconstruction studies; and two year post-
3 construction surveys. And there's been some
4 discussion of that; that's what we support.

5 I think the next bullet it says no
6 consideration; probably should read not enough
7 consideration in this draft, as it's currently
8 written, has been given to balancing between the
9 avian impacts and promoting wind energy
10 development to combat global warming.

11 The one-size-fits-all approach does not
12 work. Fortunately we're blessed to live in
13 California with a great variety of landscape and
14 topography and there is only one Altamont. And
15 some of this has been developed, in our opinion,
16 as a result of the Altamont. And it appears that
17 the one-size-fits-all approach, to us, it just
18 doesn't work.

19 And, of course, improperly structured
20 guidelines will become another barrier to wind
21 energy development. And we're hoping that this
22 Commission will help not erect another barrier to
23 wind energy development.

24 And I told you this would be brief, so
25 I'm just going to be real brief. My next slide is

1 conclusion. We heard talk today about
2 uncertainty, and we agree that these guidelines
3 should be providing more certainty.

4 No formal role for the SAC. And when we
5 say no formal role, what we mean is the approval,
6 specifically we mean the approval process. We
7 certainly believe and do consult with the
8 agencies, the state agencies, the conservation
9 groups, Audubon, Sierra Club. We're going to
10 consult with them whether we have guidelines or
11 whether we don't have guidelines.

12 We do believe that the avian monitoring
13 protocols need boundaries. The issue of unlimited
14 monitoring for the life of the project, we do not
15 support that.

16 Again, you've heard discussion about
17 what are the actual goals of the guidelines. We
18 assume that in the next draft we're going to see
19 some more definition of what this is.

20 We endorse and support most of CalWEA's
21 and CEERT's comments. And until we see the next
22 draft it's not clear that the collaborative
23 process has really worked yet in this proceeding.
24 Although staff has informed us they're going to
25 change the body language in the workshops that

1 I've attended, it looked like staff was, you know,
2 agreeing with some of our suggestions, and even
3 the conservation groups have been agreeing with
4 some of our suggestions. So we're hoping to see
5 the proof in the next draft.

6 As the current schedule stands, the next
7 draft was supposed to be the final draft. And we
8 think it's premature for the next draft to be the
9 final draft. We're asking that there be at least
10 one more draft, and maybe even another workshop or
11 two on this.

12 And if we can do that without causing a
13 delay, then fine. But if we need more time we
14 think it's better to get it right than to meet
15 some set deadline.

16 Lastly, of course California will only
17 achieve its mandated 20 percent RPS by 2010 and 33
18 percent to follow with the environmental
19 community, state and local agencies and the wind
20 industry all pulling together.

21 We look forward to continuing to work
22 with our colleagues at the California Audubon, the
23 Sierra Club and, yes, our state agencies in order
24 to finish this task that results in a workable set
25 of guidelines that does, as Commissioner Geesman

1 said at the beginning, accelerates development of
2 wind energy and minimizes impact to the avian
3 community. Thanks.

4 And I have with me here today also
5 Dennis Scullian, who's our regional business
6 manager. Dennis is a pioneer in the wind industry
7 development here in California, and has seen a
8 lot, and is here to answer any specific questions.
9 Thanks.

10 PRESIDING MEMBER GEESMAN: Thank you.
11 Brenda LeMay, Horizon Wind Energy.

12 MS. LeMAY: Is it okay if I have Paul go
13 before us from the CEERT members? Sorry --

14 PRESIDING MEMBER GEESMAN: Sure.

15 MS. LeMAY: -- to complicate it.

16 PRESIDING MEMBER GEESMAN: Paul.

17 MR. VERCRUYSEN: My name's Paul
18 Vercruyssen; I'm from the Center for Energy
19 Efficiency and Renewable Technologies.

20 Wind energy developers that are members
21 of our organization represented here today, you've
22 heard from enXco, Oak Creek, AES, PPM, FPL,
23 Horizon Wind have all worked very well
24 collaboratively with us on this project.

25 And as I think the Commissioners know,

1 we've also followed very closely work on the RPS
2 here in California and helped develop the policy
3 behind AB-32 in meeting the climate targets. And
4 that's also a very core part of our work.

5 CEERT is a coalition of renewables
6 developers and environmental groups, so situations
7 like this where there's a conflict between the two
8 interests, we have worked very hard in the past to
9 try and resolve it, to move forward on the bigger
10 issues, trying to address climate change, air
11 pollution, things that I think everyone at this
12 table, around this table, can agree that we would
13 like to work on.

14 Another example of this, we worked with
15 multi stakeholders, including the Energy
16 Commission, under contract with you guys to
17 develop plans for the transmission in the
18 Tehachapi area, which is another huge hurdle for
19 renewables in meeting the RPS here in California.
20 So none of those issues are lost on certainly
21 CEERT and I think the environmental groups, as
22 well.

23 So, one of the things that CEERT
24 actually started working on, once AB-32 was
25 passed, and I didn't realize we were going to have

1 PowerPoints or I would have brought the slide, but
2 we developed scenarios for, you know, what the
3 energy footprint would need to look like to meet
4 the goals for the carbon reductions by 2020.

5 And what you see is that we do need to
6 meet the RPS to do that. That is central to that.
7 And as a report released by the Commission to the
8 Legislature last month outlined we were a little
9 behind.

10 So really the first step and the first
11 renewable that needs to come online the fastest is
12 wind. It's the most commercially competitive and
13 there's a lot of it, especially in some of the
14 known wind resources here in California.

15 So these guidelines need to be able to
16 work immediately. They need to be finished and
17 people need to be able to pick them up and use
18 them as they see fit. And I think there still is
19 a lot of discussion about that. But one of the
20 things that I would like to point out is that, you
21 know, they need to be able to be picked up
22 immediately.

23 And one of the problems that I see, and
24 I actually wasn't going to speak to this point but
25 it's been brought up and I'd like to kind of

1 clarify it. One of the problems with the science
2 advisory committee that I see is that it would
3 take some time to organize it. There are
4 experiences that wind developers have had with
5 these types of committees in the past that make
6 them cumbersome and difficult to organize.

7 Although I think that in theory they
8 represent a very reasonable goal of getting
9 unbiased scientific input, I think that it's been
10 very difficult in practice.

11 And what I would like to encourage from
12 these guidelines, at least initially, is very
13 strong encouragement of early consultation from
14 all the pertinent permitting agencies, local and
15 statewide, conservation groups. This is
16 something, you know, Greg brought it up as an
17 example with enXco and some other developers,
18 under that premise, I think with good success in
19 getting buy-in from environmental groups.

20 And so that's something that at least
21 initially out of the gate we would like to see
22 sort of a stepwise approach of really encouraging
23 that type of behavior with the understanding that
24 any science advisory committee really needs to be
25 organized by the lead CEQA agency. And it's going

1 to be up to them how they use it, and how it's
2 organized. And it's going to be up to them to
3 organize it.

4 And one of the problems that we've had
5 throughout this process really is that we haven't
6 had enough input from some of the more important
7 counties that are going to be seeing a lot of this
8 development. So that's one of the things that I
9 would like to encourage the Commission and
10 Commission Staff to really do some outreach. And
11 we'd like to help with that, to make sure that
12 some of these counties are really onboard with
13 these guidelines.

14 Because the debate about whether they're
15 voluntary or whether they're not, the point was
16 made very early on in the process by CDFG that as
17 the regulatory agency, these are voluntary. And
18 that really ends the discussion of whether or not
19 they're voluntary.

20 But, the point for CEERT is that we
21 would like everyone to use them regardless, to
22 avoid conflicts like you have seen here in the
23 Altamont Pass and elsewhere.

24 To the point of feeling, I think some
25 people on both sides have had concerns over their

1 feelings earlier on in the process not being
2 included in these guidelines, you heard very early
3 on from Golden Gate Audubon that they were
4 concerned that one year of study would not be
5 enough. I think you've heard from a lot of
6 developers that they feel like one year of study
7 would be the exception.

8 I think what that boils down to is that
9 there's really not enough specificity in these
10 guidelines to know how they would actually go into
11 use. And further to that point, what you have is
12 a broad menu of all of the different types of
13 studies that you could possibly use with no
14 direction on what is the most useful.

15 And CEERT's goal, from the very
16 beginning, has been to encourage developers to use
17 the most effective tools at assessing risk and
18 mitigating and minimizing that risk in these
19 studies. And so I think that -- and you'll see
20 this in our specific comments, but there are types
21 of studies, bird use counts being foremost among
22 them, that really do a very good job of assessing
23 the risk. And they have been shown to connect
24 very closely with the impacts once the site is
25 built.

1 And then there are other types of
2 studies which we outline in some of our more
3 specific comments that'll be forthcoming, like
4 watching ceilometers that haven't shown that
5 connection. And while I don't see those having no
6 value to this process, I don't think that they
7 belong in the guidelines because they are not --
8 they have not been proven to assess risk.

9 And, you know, you get into the
10 discussions of intensity for the bird use counts
11 and these types of things, but in terms of what
12 types of studies need to be used, I would like to
13 see the Commission really have the developers
14 focus on what has been shown to assess the risk
15 and predict the impacts on actual sites once
16 they've gone into operation.

17 I was going to bring up the point about
18 the definition of the guidelines. I feel that
19 that is a, you know, the goal that I put forth in
20 CEERT's comments, I feel is a reasonable sort of
21 premise for moving forward. So I hope that that
22 will be included.

23 One other points that I want to bring up
24 that has been discussed a little bit today, and I
25 also brought up in our comments, was the issue of

1 ongoing continued operations monitoring. And the
2 argument has been made that ongoing operations
3 monitoring at all wind projects might be necessary
4 given the continuing impacts of global warming and
5 movement of species across different landscapes,
6 displacement, those issues.

7 To place the burden of studying those
8 impacts on a wind developer is completely counter-
9 intuitive and unreasonable because by the
10 definition of this technology it is fighting
11 climate change. And so to burden that technology
12 with studying the impacts from that, I feel is
13 unreasonable. It is in the public interest, and
14 could be taken into account on repowering or
15 future construction in that area, but I feel that
16 to burden the actual developer with that type of
17 study is not reasonable. It doesn't really make
18 very much sense.

19 You know, I really am very hopeful that
20 these guidelines will move forward on the schedule
21 that has been put forth. But I also acknowledge
22 that there is a lot of work to be done, and really
23 the issue is what types of comments are going to
24 be taken. And CEERT has really gone out of its
25 way to do outreach with the Sierra Club, Audubon,

1 both at the state and local levels, to try and get
2 input and find creative solutions.

3 And the guidelines have a long ways to
4 go, but we feel that a lot of the comments that
5 have been discussed today and are being submitted
6 throughout this process give it the potential to
7 be approved on its current timeline.

8 And so while they are clearly not going
9 to be final, we would like to make clear that
10 these should not be characterized as final until
11 they are actually approved by the Commission. We
12 are hopeful that it stays on the same path.

13 And with that, I'll defer to, I guess,
14 Brenda for more specific comments.

15 MS. LeMAY: My name is Brenda LeMay; I
16 am with wind energy developer, Horizon Wind
17 Energy. We have an office here in California,
18 specifically Berkeley, California. And have been
19 active in California for about two and a half
20 years now.

21 I support everything that Paul spoke to.
22 I don't want to be repetitive, so I just want to
23 make that statement.

24 And taking his comments a little
25 further, and possibly even to a little more

1 detail, just to be more helpful, I suppose, I do
2 want to say that every tool that a developer
3 needs, in my opinion, is in this document already.

4 And, yes, it needs more clarification
5 and clarity. But, I believe that's a matter of
6 removing some of the confusion, and not
7 necessarily adding a whole lot more to it.

8 For example, bird use counts is a good
9 example of a tool that's very useful for
10 developers. What has been placed in here is
11 actually a very good -- and, Dick, I appreciate --
12 I meant to say at the beginning, I appreciate your
13 recollection of the very -- days we spent in
14 Riverside and all the written comments that are
15 here today.

16 And I know that bird use counts is a big
17 one. Sorry I'm jumping around. So, on bird use
18 counts I am perfectly willing and capable of
19 accepting a one-year minimum horizon. It's very
20 supportive of that approach.

21 I like Julia's suggestion of having a
22 little more clarification of when more should be
23 required. I'm also supportive of more studies on
24 an as-needed basis.

25 The frequency of one week, although in

1 summertime that may or may not be warranted, but
2 I'm -- you know, that's fine, too. Again, I think
3 there's a lot of stuff that's here.

4 Thirty-minute point counts at each point
5 is good. Making sure that you've covering dawn
6 and dusk is good. Coverage of 30 to 40 percent of
7 the turbines for medium- to large-size -- I'm
8 going to skip small -- is a good approach.

9 The only issue I have with bird use
10 counts, the way it's prescribed, and I mentioned
11 this in Riverside, is the 16-point-count minimum.
12 I think 30, 40 percent is appropriate,
13 statistically acceptable, and 16 for a 100
14 megawatt project would have 100 percent coverage
15 in many cases. So there's a conflict that that I
16 think just needs to be resolved.

17 The habitat assessment is also a very
18 useful tool. It's when you're listing a
19 threatened or endangered species through the last
20 year, year and half of this avian and bat
21 guidelines process, a habitat assessment is a
22 useful tool for listing threatened and endangered
23 species. It also should be a useful tool for
24 establishing what sort of studies should be
25 required. It's mentioned in here, but I believe

1 there should be more emphasis on it.

2 Carcass searches for two years, every
3 two weeks. From what I've learned, it's a very
4 good approach. It's a lot, but I think at this
5 time at the state of the science, it's acceptable
6 at this point from a development perspective.

7 I do not believe that bird use counts
8 post-construction is necessarily warranted unless
9 you're looking at very specific issues, for
10 example, grassland habitat. And we have a
11 biologist that's going to speak to that issue
12 more. I'm not as qualified on that. But that
13 actually sort of triples the amount of money that
14 a developer would have to put in. And I'm not
15 sure it speaks to the issues of, you know, was the
16 risk assessment appropriate and are we getting
17 what we expected, and below significance.

18 Tools that aren't useful. Paul
19 mentioned a couple. I want to add -- he mentions,
20 I believe he mentioned ceilometers and
21 moonwatching. I want to add mis-- and thermal
22 imaging. And again we have scientists that's
23 going to speak to those issues more.

24 The unlimited access issue, I mean
25 unlimited study issue I concur with most of what

1 the developers have previously said on this. But,
2 Julia, I like your idea of opening up the project
3 to some extent if, in fact, there needs to be --
4 there's a reason, if you will, to continue
5 studies.

6 Again, it's sort of a question of
7 finance and what do you do with that information.
8 But, I am comfortable with something along the
9 lines, verbiage along the lines of access. I
10 might get kicked for that one a little bit from
11 some of my colleagues, but I'm going to take that
12 risk.

13 In terms of the scientific advisory
14 committee a lot has been said on that issue.
15 Where I fall out on this issue is that it goes to
16 the point of using these guidelines the day
17 they're final. And we cannot, in this room, with
18 the agencies involved, force another agency, a
19 federal agency to participate in something like
20 that unless it's already been formed and they have
21 buy-in.

22 The U.S. Fish and Wildlife Service is
23 going through their own revision of their own
24 guidelines. But I guarantee you are not going to
25 be exactly the same as these. So you

1 automatically introduce a conflict,
2 instantaneously.

3 That doesn't mean that that developer
4 shouldn't consult with the U.S. Fish and Wildlife
5 Service. Doesn't mean the developer shouldn't try
6 to get the agencies to speak and agree to the
7 issues. But I'm nervous, as a person that would
8 have to implement these from the get-go, to be
9 forced to make sure that that happens. That, to
10 me, is a big risk.

11 And, you know, I understand from the
12 distrust that folks would have, without that
13 third-party body. But again, until something like
14 that is already set up, it would be a challenge,
15 to say the least.

16 I don't really have anything else. I'm
17 going to follow up with some more detailed written
18 comments, but that's the basics. Thank you.

19 PRESIDING MEMBER GEESMAN: Thank you.
20 Andy Linehan, PPM Energy.

21 MR. LINEHAN: Thank you. Again, I'm
22 Andy Linehan with PPM Energy. I'm the director
23 for wind permitting for our company. We have
24 projects across the U.S. and several in
25 California, including the most recent large

1 project in California, the Shilo project in Solano
2 County. We have several hundred megawatts of
3 projects in the pipeline, as well. So, this
4 matters quite a bit to us.

5 I want to start by saying I really
6 appreciate the Commission and CDFG putting the
7 time and effort into these guidelines. We've been
8 part of this process since that early kickoff
9 conference last January and there's been a lot of
10 great work done. I hope to see this process
11 completed on the schedule that the Commission has
12 proposed.

13 I think there needs to be some work done
14 yet on the guidelines, but they've come a long
15 way. And certainly if all of the comments that
16 were made at the last couple workshops are,
17 indeed, as Dick has suggested, being carefully
18 digested and reviewed and incorporated, I think
19 there will be a lot of progress seen.

20 I have just one general issue I wanted
21 to comment on and then -- specific application.
22 It's not SAC; I think the SAC's had a lot of
23 discussion today and so I won't say any more on
24 that.

25 But at the heart of the guidelines here

1 are the recommendations about what should be done
2 pre-project. The pre-project assessment work.
3 And to me, at this point, that chapter has a whole
4 mix of useful tools and tools which are less so,
5 and perhaps more appropriate for general research.

6 I think the focus or sort of the
7 deciding point on those studies are what studies
8 have been -- or what techniques have been proven
9 to be useful in risk assessment. And I think
10 we've provided evidence, and there will be more
11 evidence provided in our comments, that some
12 tools, such as bird use counts have, in fact, been
13 well correlated with post-construction mortality
14 monitoring numbers.

15 Some of the other tools are less so.
16 Some of the tools that are recommended in there
17 really are more appropriate, I think, for research
18 and long-term understanding of impacts of wind on
19 wildlife.

20 For example, the discussion of bat
21 preconstruction tools recommends daily acoustic
22 monitoring for a year. My company's been very
23 involved in bat research work with the Bat/Wind
24 Energy Cooperative, which works closely with Bat
25 Conservation, International. And our sites in the

1 east at Castleman in Pennsylvania and at Maple
2 Ridge in New York and Husack in Massachusetts are
3 among the places where BCI and the BWEC are trying
4 out new tools to see if they can come up with
5 better tools for evaluating risk to bats.

6 Right now BCI will tell you that there
7 really is no effective tool to evaluate risk for
8 bats. We just seem to be striking out in the
9 various tools we've been trying so far.

10 So I think the recommendation in the
11 current guidelines is really not yet ripe to
12 recommend for most projects.

13 Instead I think it would be useful if
14 the CEC were to recommend, or that is the
15 guidelines process were to recommend to the PIER
16 funding and other sources of funding that there be
17 some effort put into basic research on this topic
18 of what's the appropriate tool for preconstruction
19 bat risk.

20 And, again, some of the work we've done
21 back east is a pretty good model there. We're
22 teaming with NYSERDA, a New York agency, with the
23 Massachusetts Technology Collaborative, and with
24 BCI, itself, making our sites available and
25 supporting some of the funding that it takes to do

1 basic research.

2 We're hoping with the research we're
3 doing now that we'll have a better handle on
4 whether particular techniques using (inaudible)
5 detectors will help us predict risk at sites. But
6 we don't know that yet. So I think it shouldn't
7 be suggested as an overall tool to be applied at
8 all projects, or even most projects, until there's
9 been more research done, fundamental research done
10 here in California to see if it's really a tool
11 that works.

12 So, I'd like to see more, in the
13 guidelines, more distinction between studies which
14 would be useful, but more as a general research
15 tool. And the kinds of studies that are really
16 risk assessment tools that are appropriately put
17 on the developer.

18 So, thank you.

19 PRESIDING MEMBER GEESMAN: Thank you.
20 Diane Fellman, FPL Energy.

21 MS. FELLMAN: Thank you, Commissioner
22 Geesman. I am not a regular participant in this
23 process, so my comments are going to be very high
24 level. And, again, we have participated in the
25 detail through CEERT.

1 I just want to say I have been using my
2 Blackberry through this meeting, but it is to
3 communicate with Kenneth Stein, our resident
4 environmental expert, who has been very involved
5 in this matter. So if there's any specific
6 questions or comments, he is available to speak.
7 Right, Kenny?

8 MR. SPEAKER: He actually won't be able
9 to --

10 MS. FELLMAN: Oh, he won't be able to
11 speak.

12 MR. SPEAKER: We can open a line out to
13 him, but we have to let the operator know.

14 MS. FELLMAN: Okay, I'll let him know.
15 Kenny, you can't speak, but if you need me, email
16 me. And Andy will watch my Blackberry.

17 Since this is my first time here I just
18 wanted to comment that I want to believe that some
19 of our great tax dollars in the Altamont have gone
20 to fund this beautiful facility and --

21 (Laughter.)

22 MS. FELLMAN: -- and so this is one of
23 the side benefits of wind power that we also need
24 to quantify and look at when we're balancing.

25 Just the title of this report, and,

1 Scott, I just wanted to -- when Commissioner
2 Geesman opened the workshop it was about balancing
3 and minimizing, as well as accelerating --
4 minimizing impacts and accelerating development.
5 But when I look at this it says reducing.

6 And, you know, we're particularly
7 sensitive, as a company, to the concept of
8 reduction as it applies in our Altamont process.
9 So, I just wanted to mention that, you know, there
10 may be areas where we, you know, we want to
11 minimize, absolutely, but it may not involve a
12 reduction. It may be doing things that are
13 already being done in an area, for example in the
14 Altamont. We're going to be committed to a path
15 there.

16 So, again, it's a semantic issue, but I
17 think it, you know, just looking at the sort of a
18 message of what is the goal of this process, and
19 what are we trying to accomplish in areas where
20 there are not great impacts today. You know,
21 doing things that aren't necessarily going to be,
22 you know, balanced with reductions.

23 Secondly, I just wanted to mention the
24 reason we intended to have also our national
25 coordinator of bird and bat issues attend this

1 meeting, but she was called into the SRC meeting,
2 the scientific review committee meeting in the
3 Altamont to talk about our settlement with Golden
4 Gate Audubon and the County of Alameda, and what
5 does that mean.

6 And I'm not going to go into details
7 about that process. I just want to observe and
8 pass along to the staff that's working on this,
9 you might want to just interview people who are
10 involved in that process. And look at not just
11 what it looks like from the outside, but
12 investigate what is it like from the inside. And
13 what is it accomplishing.

14 Because the SRC is addressing many of
15 the issues that people have raised today regarding
16 conduct of the members, independence, standards of
17 participation, what does it mean to be
18 independent, how do you balance what is advocacy.
19 And that's on the agenda for the meetings that are
20 going on today, tomorrow and Wednesday.

21 Also, just to talk about, you know, I
22 know we don't want to bring the Altamont into this
23 process, but I think there are some lessons that
24 can be learned from that, and not just, you know,
25 from us providing comments here, but from some

1 direct conversations to the extent you may or may
2 not be having those now with the Golden Gate
3 Audubon, participants in that, the County of
4 Alameda, as well as the wind companies that worked
5 in that.

6 Finally, I just wanted to mention that
7 with respect to how we are approaching the
8 Altamont, we are also looking at alternative
9 vehicles for permit process. Because, as was
10 discussed earlier, the local authorities are not
11 going to want to turn over completely their
12 review. And part of our settlement in the
13 Altamont involves the DFG process, Department of
14 Fish and Game process, of looking at the natural,
15 help me -- NCCP, thank you, Natural Communities
16 Conservation Plan, and Habitat Conservation Plan.

17 So when you move forward, which is what
18 we are really trying to do with the facilities
19 that are just, you know, up the hill from here,
20 what does that look like. How do you lay out a
21 plan. And I think Anne mentioned that, you know,
22 you're laying out a 20-year approach. And the
23 woman, Krista, mentioned that, as well. The HCP
24 in Hawaii.

25 How do you lay out a plan so it provides

1 a certainty that all the developers want. It
2 identifies conservation mechanisms. It's a
3 stakeholder process. But at the same time, it
4 just, you know, it allows people to accomplish
5 those goals, those mutually -- those seemingly
6 mutually exclusive goals in a way that brings them
7 all together and lays a roadmap.

8 And the guidelines from this agency,
9 which we appreciate and support, can bring into,
10 you know, into that, can work in that process.

11 So, and we'll have to look at how to weave
12 that together.

13 So that is all I have to say. And I
14 don't know if Kenny emailed me. We can't tell
15 right now because I have my dolphins on there.
16 Yes.

17 So if there are any questions we will be
18 providing specific comments through CEERT; and to
19 the extent we have any company-specific comments,
20 we'll provide those, as well.

21 So, I would just, again, on timing,
22 recommend it's worth having the conversation with
23 the county. To the extent that may delay things,
24 I would hope that it would improve things.

25 PRESIDING MEMBER GEESMAN: Thank you.

1 Bob Power, Santa Clara Valley Audubon Society.

2 MR. POWER: Good afternoon, everybody.

3 I'm Bob Power; I'm Executive Director for Santa
4 Clara Valley Audubon. And I'm representing the
5 4000 members of the Santa Clara Valley Audubon
6 Society. And I am thankful that my comments won't
7 sound as repetitive as I thought they would two
8 hours ago, because that's how long it's been since
9 we heard from my colleagues, Marjorie and Julia.

10 I'm here today, well, we're very
11 appreciative of your leadership in moving these
12 draft guidelines forward. And very appreciative
13 of this opportunity to comment on the guidelines.
14 They are very comprehensive, in most areas, very
15 well balanced. And I think they represent the
16 need to develop wind power efficiently while
17 protecting wildlife.

18 We agree with the Commission that the
19 guidelines should address state and federal
20 wildlife laws, as well as CEQA compliance. The
21 draft guidelines appropriately provide a summary
22 of state and federal wildlife laws, as well as the
23 California Environmental Quality Act.

24 The scientific advisory committee, a
25 subject of much concern today, is a critical

1 component of the guidelines. The guidelines
2 should exclude scientists that are compensated by
3 any applicant. The draft guidelines correctly
4 state that the purpose of the scientific advisory
5 committee is to provide unbiased, technically
6 credible advice. To provide unbiased advice,
7 however, means that members of the SAC should not
8 have conflicts of interest.

9 The Commission could take this one step
10 further by developing a list of qualified
11 objective biologists, as discussed earlier.

12 I would like to point out that the South
13 Bay salt ponds restoration project, second in size
14 in North American restoration projects only to the
15 Everglades, has a scientific advisory committee.
16 The process of committee formation and project
17 assignment was done on a very short timeframe. It
18 was done under the auspices of the Resource
19 Agency, Fish and Game, and the Fish and Wildlife
20 Service. And it was not a huge burden to bring
21 these experts together. And they meet on a
22 regular basis. So they're extremely effective and
23 critical to the process of that project.

24 The guidelines should also encourage
25 permitting agencies to inform wildlife agencies

1 when an SAC cannot reach agreement on an issue, or
2 the permitting agency does not follow the advice
3 of the SAC. So I don't think we want the burden
4 of the SAC being an actual member of the approval
5 process, but we would like to know when there's
6 disagreement in a project, and what the basis of
7 that disagreement is.

8 The pre-permitting assessment guidance,
9 we believe, is insufficient. Fish and Wildlife
10 Service guidelines and most nonindustry biologists
11 recommend three years of pre-permitting studies,
12 as Julia mentioned earlier.

13 The draft guidelines recommend too low a
14 minimum study period, and uses vague language to
15 suggest when additional studies, quote-unquote,
16 may be necessary. And that's too ambiguous from
17 our standpoint.

18 We recommend therefore that the
19 guidelines suggest a minimum of three years pre-
20 permitting studies and much clearer guidance on
21 the species, variables, cumulative impacts, et
22 cetera.

23 And as you all understand clearly, the
24 single most important issue in reducing wind
25 power's impacts on birds and bats is siting. It

1 is therefore highly critical to site turbines
2 appropriately. All of this underscores the
3 importance of the pre-permitting assessment.

4 And then the guidelines should provide
5 more guidance on post-construction monitoring and
6 adaptive management. The guidelines should
7 recommend a minimum of one year in areas with well
8 documented and low bird use, rare or no presence
9 of listed species, and few, if any, other wind
10 developments in the area.

11 Otherwise the guidelines should
12 recommend at least three consecutive years of
13 post-construction monitoring. The guidelines are
14 providing very little guidance on post-
15 construction monitoring which is critical to the
16 adaptive management process, cumulative impacts
17 assessment and permit compliance and mitigation
18 requirements.

19 The guidelines should also recommend
20 long-term monitoring at least every five years for
21 the life of the project, since climate change is
22 causing migratory patterns, ecosystems and habitat
23 needs to change rapidly.

24 Thank you.

25 PRESIDING MEMBER GEESMAN: Thank you.

1 Alan Fernandes on behalf of Riverside County.

2 MR. FERNANDES: Good afternoon. My name
3 is Alan Fernandes. I'm here on behalf of
4 Riverside County. First, I want to thank the
5 Commission for the opportunity to offer these
6 public comments, and to let you know that
7 Riverside County has been monitoring the process
8 of the development of these guidelines.

9 And indeed, in fact, because the
10 importance placed on wind energy by our board, our
11 County has attended and participated in many of
12 the workshops.

13 Consequently, I want to acknowledge the
14 hard work of the Commission. And though we
15 applaud the goals of the guidelines, themselves, I
16 want to be very clear that we would oppose any
17 mandate on a local government's requirement to
18 comply with these guidelines.

19 And the basic reason for that is
20 basically because we feel we do a pretty good job.
21 Riverside County is considered among the leaders
22 in California in terms of environmental mitigation
23 measures. Indeed, our comprehensive multispecies
24 habitat conservation plan, adopted in 2003, are
25 the types of initiatives that we believe could be

1 jeopardized were our local land use authority
2 taken away in any measure.

3 PRESIDING MEMBER GEESMAN: Let me say on
4 that point that the joint workshop that the
5 Audubon Society and the American Wind Energy
6 Association sponsored a year ago that really
7 kicked this process off, there was the suggestion
8 made by a number of the conservation groups that
9 the Energy Commission develop mandatory
10 guidelines; and that the state take over the
11 siting of wind projects because of the importance
12 that wind energy represents to the state energy
13 goals.

14 The Energy Commission expressly
15 foreswore any desire to do that. And it is our
16 judgment that local permitting is the best way in
17 which to promote this technology. And we believe
18 that it can be done consistent with the various
19 environmental laws.

20 MR. FERNANDES: Great. I mean I
21 couldn't have said it any better, myself. And I
22 guess in some sense I'm just preaching to the
23 choir if I proceed. But, I just would like to say
24 that, you know, we're here to sort of reinforce
25 and remind you of our position in that regard.

1 And we appreciate, you know, the
2 Commission's efforts in that regard. Because,
3 after all, we do believe, as one person said, you
4 know, you know, it's not a one-size-fit-all type
5 of a situation. And as long as we're mindful of
6 that, as we proceed, then -- and, again, that our
7 local land use authority's preserved, then you
8 know, we look forward to the ultimate product that
9 you produce.

10 PRESIDING MEMBER GEESMAN: Thank you.

11 MR. FERNANDES: Thank you.

12 PRESIDING MEMBER GEESMAN: Now, I am out
13 of cards. I'm going to go to the phone, and then
14 I'm going to ask if there's anyone in the audience
15 that wants to address us.

16 But, let's go to the phone first. Do we
17 have anyone --

18 MS. FELLMAN: Kenneth Stein indicated --

19 OPERATOR: -- one question -- have a
20 question from Kenneth Stein --

21 PRESIDING MEMBER GEESMAN: Go right
22 ahead.

23 MR. STEIN: I'm Kenneth Stein with FPL
24 Energy. And as Diane said, -- can you hear me
25 okay?

1 PRESIDING MEMBER GEESMAN: Yes.

2 MR. STEIN: I have been involved with
3 the process. I think it's a very productive
4 effort. As Julia said earlier, if nothing else, I
5 think it has been helpful bringing the
6 stakeholders together. And frankly I'm cautiously
7 optimistic that we will, in fact, wind up with
8 guidelines that serve the dual purpose that
9 Commissioner Geesman mentioned of you know,
10 helping to expedite wind energy facilities and
11 also protect wildlife.

12 I share a lot of the comments that have
13 been said before me. There are a couple things
14 that I guess I just wanted to highlight or
15 emphasize, and somewhat specific.

16 The first one is on the timing of pre-
17 permitting surveys. Obviously you've heard
18 different opinions on that. And folks referenced
19 the fact that the Fish and Wildlife Service has
20 three years of preconstruction surveys. I want to
21 note that even those guidelines suggest that three
22 years might be necessary only in high-risk
23 situations. And those guidelines are interim;
24 they're up for being revised. And that's one of
25 the areas of the guidelines that is rather

1 controversial. So I don't necessarily think we
2 should be following that.

3 We believe at FPL Energy that typically
4 one year of preconstruction studies is going to be
5 sufficient. That might not always be the case;
6 there might be extenuating circumstances where
7 more than a year is necessary. And I think, as
8 Julia pointed out, you might want to call those
9 kind of situations out.

10 If you're not able to do that, I would
11 think that the burden should be on any individual
12 or organization suggesting that more than a year
13 is necessary, to demonstrate that a second year or
14 more is likely to come up with information that
15 will really change the risk profile of the site.
16 Or change the mitigation measures that the project
17 proponent may have already agreed to.

18 Because otherwise I fear that you're
19 going to be requiring a second or third or more
20 years of preconstruction study on a lot of sites
21 that never really needed it, just because there
22 was the possibility that the additional
23 information might be useful.

24 The other comment I wanted to make is on
25 the other end of project development, post-

1 construction. And that has to do with adaptive
2 management principles.

3 Right now the guidelines state that
4 adaptive management principles must be included in
5 permit conditions. And we suggest that if
6 adaptive management language is going to be in the
7 guidelines, that it be changed so that it suggests
8 that adaptive management principles may be
9 appropriate in certain situations. Not that
10 they're always going to be appropriate.

11 For example, again, as Julia Levin
12 brought up earlier, where there remains
13 significant uncertainty regarding risk to birds
14 and bats, I think we agree that if you can't
15 demonstrate a certain level of certainty upfront,
16 developers need to take on some responsibility
17 after-the-fact if things don't turn out as
18 expected.

19 That said, if there are going to be
20 adaptive management type principles embodied in
21 permits and the guidelines are going to promote
22 that, that the guidelines should be careful.
23 Because if you wind up with adaptive management
24 language that basically says after two years of
25 post-construction monitoring the scientific

1 advisory committee will get together and decide if
2 turbines need to be shut down or moved, you're
3 left with project developers basically having to
4 assume that turbines are going to have to get shut
5 down or moved because there isn't very specific
6 criteria that would trigger those actions being
7 taken.

8 So, we would suggest that the guidelines
9 have language in there that encourages any
10 adaptive management language in permits to have
11 very clear triggers upfront that would take place,
12 that would prompt any sort of change in how a
13 project is managed, or the mitigation that was
14 agreed to upfront.

15 And that the cost of any of those
16 potential changes in mitigation should be
17 definable at the time of permitting. So that a
18 project developer can get a handle on the
19 potential cost risk associated with any of those
20 adaptive management principles being exercised.

21 And finally, shutting down or moving
22 turbines really should not be an option. That
23 there are other ways, other ways of mitigating
24 besides moving turbines or shutting down turbines
25 that should be available to address risks.

1 Finally, just with respect to
2 repowering. The guidelines basically state -- the
3 draft guidelines basically state that the same set
4 of these guidelines would apply to a repowering
5 project, the same as they would a new project, in
6 terms of all the pre-permitting studies,
7 scientific advisory committee, and the post-
8 construction monitoring.

9 And I really do fear that that is going
10 to really deter repowering. I think a company who
11 is looking to repower or considering leaving the
12 project as it is, is going to think real hard
13 before stepping into an arena where there's a
14 significant amount of cost and uncertainty
15 associated with the repowering process. So that
16 should be given some thought.

17 Thank you.

18 PRESIDING MEMBER GEESMAN: Thank you.
19 Greg.

20 MR. BLUE: Greg Blue with enXco. I just
21 wanted to strongly endorse FPL's comments they
22 just made on repowering and adaptive management.
23 I just wanted to go on the record that we strongly
24 support that.

25 MS. FELLMAN: And for the record, that

1 was made by FPL Energy.

2 MS. RADER: I'll ditto those comments.

3 I'll ditto those comments.

4 PRESIDING MEMBER GEESMAN: Is there
5 anyone else in the audience? Please, take a seat.
6 The silver microphone is the one that amplifies
7 your voice.

8 MR. CIMINO: I'm not a professional
9 speaker. I'm here just on my own. In fact, I
10 took four hours vacation to attend.

11 PRESIDING MEMBER GEESMAN: Please
12 introduce yourself.

13 MR. CIMINO: Oh. My name's Rich Cimino.
14 I live here in the Livermore Valley. And just
15 listening to that last speaker, I'm in private
16 industry. I just mentioned I took four hours off
17 of work to attend this meeting. Strong curiosity.

18 I don't know of any industry worldwide
19 that's in any type of business that doesn't have
20 some sort of liability exposure when they enter
21 it. And I've heard a number of comments from
22 industry representatives today where they don't
23 want responsibility for the aftermath.

24 You know, the whole essence of this, I
25 think, as a private citizen, is bird deaths and

1 mortality. This is what's raised all these
2 issues.

3 I've heard from a number of people here
4 that have a lot of experience in development. And
5 part of development is marketing, you know, you
6 got to get your product out; you got to get it
7 there fast; got to get it there where there's a
8 market. You got to make your margin.

9 But we're missing the main point. We're
10 killing a lot of birds. I heard Paul talk about
11 global warming, and you know, we're fighting
12 global warming. What if we beat global warming
13 and we don't have any birds left? What's that all
14 about? You know, where's the conclusion on this?

15 I've spent 30 years in manufacturing
16 computers; and we have regulations. We have UL
17 regulations. You cannot send a computer out and
18 have it catch fire, whether it's on your lap which
19 is what happened with Dell computer, because they
20 avoided regulations recently. Or, you know, in a
21 hotel, in a presentation like this where there
22 could be many deaths.

23 We're saddled with international EMI/RFI
24 exposures. You don't want a computer in your
25 hospital setting off someone's pacemaker. You

1 know, there are responsibilities in industry. And
2 everyone has to step up. There's a whole set of
3 morals that can't be avoided just because we want
4 to do our marketing.

5 No computer can go out nationwide
6 without having all of its software tested for
7 several months. Currently it's all done by
8 Microsoft. It costs money. You develop a
9 product; it takes a year and half; it sits for six
10 months being tested so when we buy it it works.
11 And we know it works well.

12 So we're missing a lot of points here.
13 We're listening to a lot of intelligent people
14 that have really represented their side well, but
15 we can't let some facts go un-noticed. And, you
16 know, we're being marketed.

17 And we need clean power, but we need
18 clean power to be responsible in siting. Some
19 windmills just get placed in the wrong spots.
20 They might have to come down. And we might have
21 to have three or four or five or six years worth
22 of monitoring.

23 The gentleman on the telephone said,
24 gee, you know, after one year we don't know if we
25 need any more monitoring. And the people that

1 suggest it should be responsible for making that
2 right. They won't let us on the property. We
3 can't get on your property to find out how many
4 golden eagles you've killed, how many red-tailed
5 hawks, how many burrowing owls. And we don't even
6 know about songbirds. Because someone here, I
7 don't know who said, gee, we should only look at
8 certain species. The gentleman from Davis says,
9 gee, Australia has a checklist; they have a
10 matrix. If you have an area like this, maybe that
11 only kills golden eagles. If you have an area
12 like this, maybe you only kill burrowing owls.
13 And that's all we should be worried about.

14 Altamont Pass has been here longer than
15 any of us, and it'll be here whether we fix global
16 warming or not. And I think people in the
17 Livermore Valley where I live and have spent most
18 of my life, if not practically all of my life,
19 want our bird life. We have a quality of life
20 And throughout California, whether you're from
21 Riverside County or way north, or in the Central
22 Valley sort of where we are, we need to have a
23 balanced approach.

24 And I want to really urge the Committee
25 to take a look at some regulation, and to take a

1 look at some responsibilities to be placed on
2 these manufacturers or developers that they have
3 responsibility for a reasonable time out. It's a
4 warranty.

5 When you buy a car how many of us have
6 gotten mad at General Motors and Ford. You buy a
7 car and they don't care how it works for the next
8 three years. You know, we need to have
9 accountability. We need to have some regulation.
10 They could be soft regulations. We're not looking
11 to beat anyone up. I'm in industry, myself. I've
12 been doing this for a long time.

13 But, you know, we all have to be
14 responsible for our product. And we have to be
15 responsible for the markets we put it in. And we
16 have to be responsible for the time we bring it to
17 market.

18 So we need some regulation. It can be
19 gentle, it can be soft. We don't have to beat
20 people up. I don't think -- you know, we're all
21 tired of that. We're not the IRS. Why did I say
22 that.

23 Anyhow, you know, my point is that
24 bottomline, you guys are all spending a lot of
25 time. You're trying to do the best job. The

1 industry's trying to do the best job. They'd like
2 to have little or nothing, god bless them, and you
3 know, we're all trying to get to market early, as
4 I said earlier.

5 But we need some regulation. We can't
6 come out of this without all of us being tied
7 together and jointly responsible. The users of
8 the clean energy, the manufacturers and the
9 producers of the clean energy, the Commission has
10 their responsibility. It's a big responsibility.
11 You have your responsibility to all the citizens
12 of California and the government agencies tied in
13 with you.

14 And I probably said just about
15 everything I have to say. Thank you.

16 PRESIDING MEMBER GEESMAN: Thank you
17 very much. Diane.

18 MS. FELLMAN: I just wanted to mention
19 that the scientific review committee of Alameda
20 County that's studying the Altamont, we have
21 extensive monitoring going on out there right now.
22 But if you're interested in tracking what's
23 happening with the Altamont in particular, I was
24 just looking, I don't know the website, but if you
25 give me your email I can give you the link. It's

1 through the Alameda County website, through the
2 board of supervisors.

3 So all the scientific information that's
4 going to be known is going to be published on that
5 website.

6 MR. CIMINO: I've gotten some web stuff
7 and I came a little bit prepared. I don't want to
8 make it sound like I just fell off the, you know,
9 the turnip truck out front and found this meeting.

10 But, you know, one of the things we
11 don't have is we can't -- and what sort of brought
12 me up front, I wasn't planning on saying anything,
13 was the gentleman's comment about re-siting, and
14 if an individual or an organization, whether it be
15 Audubon or whoever, wants to have or suggests that
16 there's more monitoring due, that that group or
17 that person or parties are responsible for
18 approving that.

19 Well, that's a good statement. But let
20 us on the property. You know, how do we find out
21 that we need to continue. So where is that group?

22 Now, you know, there's probably a lot of
23 people that are very responsible individuals in
24 the community that would like to volunteer some
25 time to maybe -- and be managed, you know, on the

1 property, not just, you know, a picnic group; you
2 go out and you find carcasses or some strange
3 thing like that. But be managed, subject
4 themselves to some level of industry management,
5 as volunteers, and go do more periodical checks
6 for carcasses. And see if a site doesn't need
7 more post-site management and evaluation.

8 But, you know, we can't -- that's not
9 available to us. So there's a lost of mistrust
10 maybe. And we have to get through that, too.
11 Because this is a big partnership. We can't come
12 out of defeating global warming with no birds. I
13 mean then we've really lost the battle, you know,
14 we really have.

15 And I really understand marketing and I
16 really appreciate what everyone's doing. But, you
17 know, we just have -- we've got to work together
18 better. And that means some of us may have to do
19 some things we don't like.

20 I mean I'm nervous, you know, I don't
21 particularly like being up here. But I decided to
22 get up here. You know, I'll probably regret it
23 later. But, you know, so I'm speaking out on
24 behalf of maybe getting some balance. Because we
25 really heard from you guys today, and you know, we

1 need to know that we're all going to work
2 together. And that we're not going to intimidate
3 or try to intimidate any type of conclusion.

4 That's all part of sales, you know. I
5 understand sales, too. We're selling today,
6 everyone is selling. I'm selling my end. So, you
7 know, and hopefully when you're selling and
8 marketing you get an order. And the order's based
9 on compromise, you know. None of us get an order
10 that we always really like unfortunately.

11 So we need compromise. And we need
12 citizen participation, you know, we need to be
13 able to get on the property and maybe say, gee,
14 that windmill on that particular ridge over there,
15 that's really eating up a lot of birds, you know.
16 Maybe that one -- and how productive is that one,
17 you know. Maybe it's got an old turbine and it
18 really is ready to go. You know, maybe there's
19 some new turbine technology out there that we
20 should implement.

21 But we don't know. So, you know, we got
22 to really work together. That's my point. I mean
23 I took four hours vacation today. I could have
24 used that for fishing on a Friday afternoon or
25 something, you know.

1 (Laughter.)

2 MR. CIMINO: Is there any more questions
3 of me? I don't know. Maybe I should have asked.

4 PRESIDING MEMBER GEESMAN: I've read
5 recently that the mercury content of fish in Bay
6 Area reservoirs would be a dissuading factor --

7 (Laughter.)

8 MR. CIMINO: I don't have a lot of hair.

9 PRESIDING MEMBER GEESMAN: Do we have
10 anyone else in the audience who cares to address
11 us?

12 Okay. I think it's been a very
13 productive day, very productive afternoon. I will
14 say that Commissioner Pfannenstiel and I are
15 students, if you will, of the public participation
16 process.

17 And as much as it pains me to invite or
18 agree to any delay in this process, which to my
19 mind is already five months behind the schedule
20 that the Commission had outlined for it, I do
21 think that the public, both the conservation
22 organizations and the industry, are entitled to
23 another crack at a staff draft.

24 I think that we've got enough editorial
25 changes that have been outlined that the best way

1 for this process to go forward is to add another
2 workshop to the process.

3 I won't say that it'll be as long as 90
4 days of an extension. We need to go back to
5 Sacramento and review calendars and put out a
6 public schedule. But you will see Commissioner
7 Pfannenstiel and me again on another staff work
8 product before we then impose our judgments and
9 opinions on the process and create a Committee
10 draft. I think that's the best way for us to
11 proceed.

12 I certainly encourage you all to be as
13 specific as you can be in your written comments,
14 as well. The ones we've received to date have
15 been quite helpful, and I think quite informative
16 of areas where the staff draft needs to be
17 improved. And I'm hopeful that the transcript of
18 this workshop will serve the same function.

19 So, with that, we'll be adjourned.
20 Schedule to follow. Thank you very much.

21 (Whereupon, at 4:34 p.m., the workshop
22 was adjourned.)

23 --o0o--

24

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CERTIFICATE OF REPORTER

I, PETER PETTY, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Committee Workshop; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
workshop, nor in any way interested in outcome of
said workshop.

IN WITNESS WHEREOF, I have hereunto set
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